OPINIONS

OF THE

CORPORATION COUNSEL and ASSISTANTS

JANUARY 1, 1940 to JANUARY 1, 1943

Edited and Compiled by
BARNET HODES
Corporation Counsel

CITY OF CHICAGO
DEPARTMENT OF LAW

VOLUME XXI

PUBLISHED BY
AUTHORITY OF THE CITY COUNCIL

1943

CHAMPLIN-SHEALY COMPANY, CHICAGO

LAW PRINTERS

365

PREFACE

While this volume, containing the opinions of the Chicago Department of Law rendered during the period from January 1, 1940 to January 1, 1943, continues the innovation in organization of material begun in 1935, it differs from its predecessors in one significant respect.

This significant difference is that the period covered by the opinions in this twenty-first volume of the *Opinions of the Corporation Counsel and Assistants* saw our approach to and entry upon the war years of World War II. Hence it was a period in which arose the beginnings of new problems born of the war. Foreshadowing a trend which may profoundly affect future social and governmental philosophy, questions of the interrelationship of federal and local government were more than commonly rife in this triennium. This and other early signs of the city's readjustments to accommodate itself to the changes of war constitute the unique aspect of this volume.

The custom of publishing its opinions in printed and bound form was initiated by the Chicago law department in 1897 when opinions dating back to 1871, the year of the great Chicago fire, were published. In this and subsequent volumes, however, no attempt was made to classify or collate the material, nor were all opinions included. Many of perhaps ultimately greater value than those selected were omitted by the arbitrary method of selection then employed.

This system, or rather lack of system, was continued until 1935. Following the appointment of the present corporation counsel, an effort was made to find some means of increasing the utility of the collected opinions. This resulted in a plan to collate opinions by subject matter so that all opinions on like or similar subjects would be found together, enabling the user of the new volume to discover readily all official writings of the department on any specific or related subject. It was also decided to include *all* opinions either by printing in full, by digest or by reference, thus avoiding the dangers of omission inherent in any system of arbitrary selection.

These plans culminated in the publication of Volume XVIII in October, 1936, and in subsequent volumes, in which the system of collation and completeness then adopted has been continued.

While this increased the usefulness of those volumes published after 1935, to the department, to attorneys practicing in the realm of municipal law and to students of social history, it in no way improved the utility of the seventeen volumes published prior to that date.

To overcome this deficiency, a cumulative index of all opinions rendered by the Chicago law department from 1872 to 1940 was prepared and published in that latter year as part of Volume XX. The cumulative index, in effect, organized all published opinions according to subject matter and consequently makes more readily available the opinion content of all previous volumes, mending, insofar as may be, the oversight of previous generations.

This plan of collating by index is also carried forward into the present volume so that it, when used in conjunction with Volume XX, furnishes a complete and easily read guide to all published opinions.

It is interesting to note that three wars have been waged during the period covered by these published opinions. The efforts of the city to aid in carrying on those conflicts are recorded therein, plainly to be read by the student of history. During this same period, the city grew to greatness. Its "growing pains" are clearly perceptible within the covers of this series. The continuity or breaks in social mores and attitudes of generations of Chicagoans are permanently recorded in these volumes. It is not impossible that an archaeologist of some distant future may find herein a Rosetta Stone with which to trace interesting aspects of the life and society of the late nineteenth century and the twentieth.

This prefatory statement would be incomplete without an explanation to the reader of why a charge is made for copies of Volume XXI of the *Opinions of the Corporation Counsel and Assistants.*

Publication of Volume XVIII, with its improved organization of material, greatly heightened the interest of attorneys and students in this collection of opinions. This interest, manifested by increased demand for that and subsequent volumes, forced the law department to increase the distribution of copies, with consequent greater expense. Costs of publication had to be met en-

tirely from municipal tax revenues. Therefore, when publication of the present volume was contemplated, the city council, at the suggestion of the corporation counsel, ordered that at least part of the cost be borne by its users. This is nothing more than sound business practice. Accordingly, there is a charge for copies of Volume XXI—a charge which covers only the actual cost of printing and binding.

The great amount of detail work, of research and of legal judgment required in the compilation of a volume of this type can be readily understood by anyone who even briefly runs through its pages. I therefore wish to acknowledge the cooperation of all the assistant corporation counsel whose efforts made possible this volume, and to express my appreciation for the loyal assistance of the entire staff of the Chicago law department, especially that of the Research Division, who carried the work through to completion. Appreciation is also due Miss Ruth Nelson, who was directly in charge of the project, and whose skillful and intelligent effort greatly contributed to its thoroughness.

BARNET HODES,
Corporation Counsel.

December 31, 1943.

TABLE OF CONTENTS

PAGE

PREFACE iii

AUTHORS OF OPINIONS ix

EXPLANATORY NOTES AND DATA x

SECTION I

Municipal Organization and Intergovernmental Relations

CHAPTER I. POWERS AND DUTIES OF CITY COUNCIL AND CITY OFFICERS

A. City Council 3
B. Police Department 9
C. Board of Health 26
D. Other Departments and Officers 38

CHAPTER II. RIGHTS AND DUTIES OF CITY EMPLOYEES

A. Civil Service 54
B. Salaries 61

CHAPTER III. ANNUITIES AND BENEFITS FOR CITY EMPLOYEES

A. Municipal Employees' Annuity and Benefit Fund 69
B. Firemen's Annuity and Benefit Fund 70
C. Policemen's Annuity and Benefit Fund 73
D. Other Annuity and Benefit Funds 76

CHAPTER IV. RELATIONS OF CITY WITH OTHER GOVERNMENTS

A. Chicago Housing Authority 78
B. Federal Relationships 91
C. Relationships With Other Governments 100

CHAPTER IV-A. FEDERAL REGULATIONS 112

SECTION II

Police Powers of the City

CHAPTER V. REGULATION OF PUBLIC HEALTH, SAFETY AND WELFARE

A. Foods and Cosmetics 114
B. Liquor 128
C. Weapons 130
D. Gambling and Lotteries 130
E. Other Health and Welfare Regulations 134

PAGE

CHAPTER VI. LICENSES AND PERMITS
A. Liquor License 137
B. Undertakers' Licenses 145
C. Drivers' and Vehicle Licenses 147
D. Other Licenses and Permits 154
E. Refund of License Fees 163

CHAPTER VII. BUILDINGS AND ZONING
A. Buildings 166
B. Frontage Consents 172
C. Zoning 175

CHAPTER VIII. RELIEF 178

CHAPTER IX. PUBLIC WAYS
A. Dedication and Vacation 185
B. Use of Streets, Alleys and Sidewalks 192
C. Advertising and Handbills 194
D. Traffic 198

CHAPTER X. PUBLIC UTILITIES
A. Railroads 203
B. Other Utilities 208

SECTION III

Management of the Municipal Corporation

CHAPTER XI. FINANCE
A. Appropriations and Taxes 224
B. Management of City Funds 230
C. Judgments and Claims 242

CHAPTER XII. CITY PROPERTY
A. Real Estate 250
B. Waterworks 256
C. Taxation of City Property 258

CHAPTER XIII. CONTRACTS
A. Bids and Awards 261
B. Execution and Interpretation 262

CHAPTER XIV. PUBLIC IMPROVEMENTS
A. Construction 272
B. Special Assessments 302

PAGE INDEX TO OPINION NUMBERS 307

INDEX 313

AUTHORS OF THE OPINIONS

Authors of the opinions recorded in this volume are indicated by their initials. The following is a list of the initials and the corresponding full names arranged in the alphabetical order of the initials.

A. A. P.	A. A. Pantelis
A. C.	Alphonse Cerza
A. E. P.	A. E. Patterson
A. F. G.	Al F. Gorman
A. J. B.	A. J. Barlow
A. J. R.	Alexander J. Resa
B. H.	Barnet Hodes
B. O'H.	Barrett O'Hara
C. B. C.	Charles B. Collins
C. H. L.	Carl H. Lundquist
C. J. A.	Carl J. Appell
C. M. W.	C. M. Weyna
C. N.	Casper Nathan
C. P. H.	Charles P. Horan
D. D. K.	Daniel D. Kipnis
D. H. N.	David H. Neuman
D. L. L.	David L. Leeds
E. F.	Ernest Feldon
E. H.	Emmett Harrington
E. J. B.	Emil J. Broz
E. J. K.	Edward J. Kelly
E. R. D.	Earle R. Downes
E. R. H.	Edward R. Hartigan
F. V. M.	Fred V. Maguire
G. A. H.	George A. Higgins
G. F. M.	George F. Mulligan
G. J. T.	George J. Tourek
H. M. A.	Herbert M. Abrams
H. R. P.	Harry R. Posner
J. A. V.	James A. Velde
J. F. G.	Joseph F. Grossman
J. F. O'M.	John F. O'Malley
J. H. S.	J. Herzl Segal
J. J. D.	James J. Danaher
J. J. M.	John J. Mortimer
L. L. K.	L. Louis Karton
L. V. R.	Leo V. Roeder
M. A. G.	Michael A. Goldberg
M. D. S.	Milton D. Smith
M. H. F.	Martin H. Foss
N. N. E.	Norman N. Eiger
O. S. F.	Otho S. Fasig
P. J. L.	Patrick J. Lucey
P. M. K.	Patrick M. Kelliher
R. J. N.	Robert J. Nolan
R. N.	Ruth Nelson
S. K.	Seymour Klaff
W. H. S.	William H. Sexton
W. V. S.	Walter V. Schaefer

EXPLANATORY NOTES AND DATA

KEY TO CITATION ABBREVIATIONS

The City Code has been cited as in the following examples:

Code '11: 1541	refers to section 1541 of the *Chicago Code of 1911.*
Code '22: 2063, 2064	refers to sections 2063 and 2064 of the *Chicago Municipal Code of 1922.*
Code '31: 4194	refers to section 4194 of the *Revised Chicago Code of 1931.*
Mun. Code: 25-8	refers to chapter 25, section 8 of the *Municipal Code of Chicago,* adopted on August 30, 1939 and subsequently amended.

The revised Illinois statutes have been cited as in the following examples:

IRS '39, 98: 18	refers to chapter 98, section 18 of the Illinois State Bar Association's *Illinois Revised Statutes of 1939.*
ISBS '37, 24½: 12	refers to chapter 24½, section 12 of the Illinois State Bar Association's *Illinois Revised Statutes of 1937.*

Opinions of the Corporation Counsel of Chicago and Assistants have been cited as in the following examples:

Op. Corp. Coun. (1920-23) p. 42	refers to *Opinions of the Corporation Counsel of Chicago and Assistants* rendered from January 1920 to April 1923 inclusive, page 42.
19 Op. Corp. Coun. 409 (No. 9245)	refers to *Opinions of the Corporation Counsel of Chicago and Assistants* volume 19, page 409, opinion number 9245.
* *	* * * * *
ALR	*American Law Reports.*
Coun. J.	*Journal of the Proceedings of the City Council of Chicago.*
CJ	*Corpus Juris.*
Ill. Laws	*Laws of the State of Illinois.*
Ill. Stat. (Jones Ann.)	*Jones Illinois Statutes Annotated.*
Ill. Stat. Ann. (Smith-Hurd)	*Smith-Hurd Illinois Annotated Statutes.*
Op. Ill. Atty. Gen.	*Opinions of the Attorney General of Illinois.*
Op. Atty. Gen. of US	*Opinions of the Attorney General of the United States.*
RCL	*Ruling Case Law.*
USCA	*United States Code Annotated.*
USHA	*United States Housing Authority.*
US Stat.	*United States Statutes at Large.*

DATA GIVEN WITH REPORTED OPINIONS

Above each opinion reported in this volume there is printed in italics the number of the opinion, the office or officer to whom the opinion was written, the initials of the person who prepared the opinion and the date of the opinion.

When the office or officer to whom the opinion was written is not indicated, the opinion was addressed to a person who was not a municipal official, having public business with the city.

NUMBERING OF OPINIONS

The numbering of opinions is a continuation of the chronological sequence of Volume XX of the *Opinions of the Corporation Counsel and Assistants;* the arrangement of the opinions is according to their subject matter.

For reference convenience, a table of the opinion numbers with corresponding page numbers is given in this volume at page 307.

REFERENCES TO OPINIONS NOT INCLUDED, BUT NOTED

An annotation to an opinion digest which states, as in the case of Opinion No. 10491, p. 273, "Opinion No. 10491 * * * holds substantially the same as the above opinion" indicates that Opinion No. 10491 has not been included in the volume because it is substantially the same as the opinion that is recorded, and is noted solely for the sake of completeness.

This information is given for its value to the city officials and employees, so that the Department of Law will have a permanent record of all opinions rendered.

SECTION I

MUNICIPAL ORGANIZATION AND INTER-GOVERNMENTAL RELATIONS

CHAPTER I

POWERS AND DUTIES OF CITY COUNCIL AND CITY OFFICES

A. CITY COUNCIL

ORDINANCE ANNEXING UNINCORPORATED TERRITORY

(No. 10199—City Council, Committee on Finance—C. B. C.—February 14, 1940.)

The city council has the authority, after proper proceedings in the county court, to pass an ordinance annexing certain unincorporated territory to the city.

Citation: IRS '37, 24: 369.

LIABILITY OF GARAGE OPERATOR

(No. 10274—Alderman, 41st Ward—M. H. F.—May 20, 1940.)

The power of the city council to regulate, by ordinance, the contractual relationship between car owners and garage operators is questionable.

As the parking or storage fee given by motorists to garage operators is for the safe keeping of motor vehicles stored with him, the garage operator is liable for loss of the vehicle unless he can show the loss resulted through no lack of reasonable care on his part.

In case of damage to a car delivered to the garage in good condition, negligence will be presumed in the absence of a showing to the contrary. The garage operator, however, is not liable for the loss of articles left in cars unless he is given notice of the presence of the articles, and assumes the additional undertaking of safekeeping them.

Citations:

Cases: Rhodes v. Warshawsky, 242 Ill. App. 101 (1926).
Ford Motor Company v. Osburn, 140 Ill. App. 633 (1908).
Weinberger v. Werremeyer, 224 Ill. App. 217 (1922).
Scherb v. Randolph-Wells Auto Park, Inc., 301 Ill. App. 298 (1939).
Rogers v. Murch, 253 Mass. 467, 149 NE 202 (1925).
Willis v. Jensen, 82 Utah 148, 22 P. (2d) 220 (1933).
Schulte v. North Terminal Garage Co., 291 Mass. 251, 197 NE 16 (1935).
Chesley v. Woods Motor Vehicle Co., 147 Ill. App. 588 (1909).
Byalos v. Matheson, 328 Ill. 269 (1927).
Evans v. Williams, 232 Ill. App. 439 (1924).

OPINION OF FOREGOING SYNOPSIS

Your communication of recent date requests our opinion as to whether operators of open air public garages, storing motor vehicles for rent or compensation are responsible for the loss of wearing apparel and other articles of personal property left in such vehicles while parked or stored on the garage premises. You also wish to know whether such garage operators are liable for damages to such vehicles while parked or stored on the garage premises. You state that most of the operators of parking lots (open air garages) print on their call checks a rider to the effect that they are not responsible for articles left in cars, but that it is your view that because they accept parking or storage fees from the vehicle owners the garage operators should be required by suitable regulation to assume the responsibility for the articles left in cars.

The legal questions presented find solution in the law of bailments, the relationship between the car owner and garage operator being that of bailor and bailee. A "bailment" may be defined as a delivery of personal property in trust to another for some specific purpose. Generally speaking a bailee for hire owes the bailor the duty of exercising ordinary care, such as every prudent man takes of his own property of like character, but is not an insurer or responsible for losses not occasioned by his own or his servant's negligence, as loss by thieves, or forcible taking, or by fire. (*Rhodes* v. *Warshawsky* (1926), 242 Ill. App. 101; *Ford Motor Company* v. *Osburn* (1908), 140 Ill. App. 633.)

So far as the wording on the call checks is concerned this seems unimportant for it has been decided that a bailee may not change his legal liability by disclaiming it on a sign or notice. (*Weinberger* v. *Werremeyer* (1922), 224 Ill. App. 217.)

So far as the loss by theft of the motor vehicle itself is concerned it is our opinion there is no question but what the garage operator is responsible unless he can show that its loss resulted through no lack of reasonable care on his part. (*Scherb* v. *Randolph-Wells Auto Park, Inc.* (1939), 301 Ill. App. 298.)

It is necessary, however, to consider more fully the relationship between the motor vehicle owner and the garage keeper with respect to property other than the motor vehicle and its parts. The garage operator's undertaking for which he exacts a fee is that of keeping safely the property stored with him, namely the motor vehicle. It does not extend to the safekeeping of personal effects left in the car. The fact that the garage operator gives notice to his patrons by means of a rider on the call checks that he will not be responsible for articles left in cars tends to show that the subject of the bailment consists of the vehicle only. While we find no reported court decision in Illinois directly in point there are a number of cases which have been decided in other states holding that the garage operator is not liable for the loss of articles left in cars unless he is given notice of the presence of the articles and assumes the additional undertaking of safekeeping them. (*Rogers* v. *Murch* (1925), 253 Mass. 467, 149 N. E. 202; *Willis* v. *Jensen* (1933), 82 Utah 148, 22 P. (2d) 220; *Schulte* v. *North Terminal Garage Co.* (1935), 291 Mass. 251, 197 N. E. 16.) In the last mentioned case, which was an action to recover the value of merchandise contained in a truck stored in a public garage, the court pointed out that the law does not trust upon one the liabilities of a bailee without his knowledge or consent and that if it might be assumed that the garage keeper had reason to know the truck contained merchandise, his duty with reference to the merchandise would rise not higher than that of a gratuitous bailee. A gratuitous bailee is liable only for gross negligence or bad faith. In *Chesley* v. *Woods Motor Vehicle Company* (1909), 147 Ill. App. 588, Chesley upon putting his automobile

in a public garage for the night, turned over his sample case to the garage porter for safekeeping. The court held that the evidence did not cast upon the garage operator the duty of a voluntary or gratuitous bailee or any other legal responsibility in relation to the sample case. In view of the holding in this case it seems probable that the Illinois courts will follow the above mentioned decisions of the courts of other states.

On the matter of the responsibility of the garage operator for damages to a motor vehicle while in his keeping it has been decided that the garage operator will be held liable after a showing is made that the vehicle was delivered to him in good condition, and that negligence on the part of the garage operator will be presumed in the absence of proof on his part that he was not negligent. (*Byalos* v. *Matheson* (1927), 328 Ill. 269; *Evans* v. *Williams* (1924), 232 Ill. App. 439.)

With respect to the suggestion that municipal regulations be drafted to charge garage operators with responsibility for the loss of personal property left in cars, our opinion is that it is doubtful whether the city council possesses the power to regulate the contractual relationship between car owners and garage operators and by ordinance establish upon the latter legal liability for the loss of articles left in cars during the storage or parking period. Nevertheless it may be that the city council, under its power to regulate the public garage business, may enact regulations which, while not directly affecting the legal relationship between car owners and garage keepers, would be within the city's police power and calculated to afford motor vehicle owners greater protection than they now enjoy against the theft of cars and property left in them; such as regulations requiring open air garage premises to be enclosed to keep out loiterers, requiring the locking of car doors and the deposit of keys in a suitable place for safekeeping, etc.

CHANGING NAMES OF STREETS PARTLY OUTSIDE CITY

(No. 10298—Commissioner of Public Works—A. F. G.—June 25, 1940.)

The name of streets wholly within the corporate limits of the city must be changed upon petition of sixty per cent of the frontage owners, but when one side is in Chicago and the other in another city, joint action by resident owners of both cities is necessary and each city should change the name of that portion of the street within its jurisdiction.

Citation: Cities and Villages act, art. V, sec. 23.

COUNCIL CONTROL OVER RENTALS AND KITCHENETTE APARTMENTS

(No. 10326—Chairman, City Council Committee on Housing—N. N. E. —August 9, 1940.)

The city council has no direct control over rentals, but the council committee on housing is authorized to investigate housing conditions and make recommendations.

The converting of apartments into kitchenettes is governed by the building and health provisions of the code.

Citations: Housing Authorities act, secs. 2, 4(i), 8.
IRS '39, 67½: 8.

PETITION TO CHANGE NAME OF PART OF STREET.

(No. 10393—Alderman, 5th Ward—A. F. G.—December 27, 1940.)

A petition to the council to change the name of that part of a street lying east of State street must be signed by the owners of at least sixty per cent of the property abutting the entire street, both east and west of State street.

Citations:
Statute: Cities and Villages act, art. V, sec. 23.
Ordinances: Mun. Code: 30-3.
Coun. J. (1936-37), p. 1709.
Other reference: 20 Op. Corp. Coun. 215 (No. 9771).

ADMINISTRATION OF PLUMBING INSPECTION

(No. 10421—Commissioner of Buildings—A. F. G.—February 17, 1941.)

The city council has power by ordinance to place the regulation and inspection of plumbing in buildings in any department it deems proper.

Citations:
Statutes: IRS '81, 24: 535 to 539.
Illinois Plumbing License law, sec. XA.
Ordinances: Mun. Code: 9-7, 13-7.1.

POWER OF CITY TO IMPOUND MOTOR VEHICLES

(No. 10426—Alderman, 41st Ward—M. H. F.—February 21, 1941.)

By statute, the city has the power to impound motor vehicles causing damage to city streets, and hence the enactment of an ordinance to accomplish this purpose would be unnecessary.

Citations:
Statute: IRS '39, 95½: 12.
Case: Mammina v. Alexander Auto Service Co., 333 Ill. 158 (1928).

EXTENSION OF DAYLIGHT SAVING TIME

(No. 10442—Chairman, Committee on Judiciary & State Legislation—M. H. F.—March 21, 1941.)

The city council may extend the present period of "daylight saving time" for one additional month as it is authorized to legislate respect-

ing the official time within the city for the transaction of city business.

Citations:
Ordinance: Mun. Code: 193-33.
Other references: 10 Op. Corp. Coun. (1916-19), p. 897.
11 Op. Corp. Coun. (1920-23), p. 59.
18 Op. Corp. Coun. (1929-35), p. 84 (No. 8905).

LICENSING OF CIGARETTE DEALERS

(No. 10467—City Comptroller—J. F. G.—April 28, 1941.)

The power of the city to regulate and license the wholesale or retail sale of tobacco will not be affected by the pending bill in the Illinois legislature, which is an act in relation to a tax on selling cigarettes at retail, since the city's power has been upheld under the city's general police power to promote the public health, and the instant bill contains a clause saving the city's powers.

Citations:
Ordinance: Mun. Code: 178-1 to 178-21.
Other reference: House Bill No. 546 (1941).

CONTRIBUTION OF ALUMINUM FOR NATIONAL DEFENSE

(No. 10506—Commissioner of Public Works—J. F. G.—July 14, 1941.)

Property of the city, whether used for general corporate purposes or for the waterworks system as part of the "water fund" property, may be disposed of only by authority of the city council. If the accumulation of property and materials containing aluminum was adopted by the director of the office of civilian defense as one of the measures designed to afford adequate protection of life and property in the present emergency, there is no doubt that the city in its corporate capacity may aid and promote this measure by contribution through its council of defense of this available material.

Citations:
Statute: State Council of Defense act, approved April 17, 1941.
Case: People ex rel. Illinois Armory Board v. Kelly, 369 Ill. 280 (1938).
Other reference: U. S. Executive Order 8737, May 20, 1941, establishing Office of Civilian Defense.

CHARGES FOR AIRPLANE FLIGHTS

(No. 10517—Subcommittee on Aviation and Recreation—J. F. G.—August 1, 1941.)

The city council has power to fix reasonable tolls or charges for scheduled flights at the municipal airport by virtue of its general

control over the airport, or it may establish any schedule of tolls or charges for a definite term by a contract ordinance.

Citations:
Statute: Cities and Villages act, art. V, sec. 100.
Ordinance: Coun. J. (1940-41), p. 2908.

PAYMENT FOR FIRE SERVICE BEYOND CITY LIMITS

(No. 10525—Alderman, 41st Ward—A. F. G.—August 28, 1941.)

The city code provides for the rendering of fire protection service outside the city limits under certain circumstances and designates the compensation to be paid therefor, but the city could not compel private property owners outside the city to carry sufficient fire insurance to pay for runs of city fire engines beyond the city limits.

Citations:
Statute: Cities and Villages act, art. V, sec. 64a.
Ordinance: Mun. Code: 12-48, 12-49, 12-52.

COSTS OF CLEARING WEEDS AND "UNSIGHTLY CONDITIONS" ON PRIVATE LAND

(No. 10541—Committee on Judiciary and State Legislation—A. F. G. —October 10, 1941.)

The city council may pass an ordinance regulating the growth of weeds on private property and providing that any expenses incurred by the commissioner of public works in cutting such weeds shall be chargeable to the owner of the property.

However, the city council may not declare a parcel of land left in an "unsightly condition" to be a nuisance, nor may it provide for the assessment of costs against the owner for clearing said premises.

Citations:
Statute: Cities and Villages act, art. V, secs. 75, 93a.
Ordinance: Mun. Code: 99-9.
Cases: People v. City of Chicago, 280 Ill. 576 (1917).
Village of Palmyra v. Warren, 114 Ill. App. 562 (1904).

SALE OF PERSONAL PROPERTY USELESS TO CITY

(No. 10561—Commissioner of Streets and Electricity—R. N.—November 18, 1941.)

Personal property of the city which is no longer useful to the city may be sold with or without advertising.

LIEN FOR INSPECTION SERVICE

(No. 10603—Commissioner of Buildings—A. F. G.—February 16, 1942.)

There is no statutory provision which grants authority to cities to declare charges for inspection or other services to be a lien against premises to which such services were supplied.

Citations:
Case: Rockford Loan Ass'n v. City of Rockford, 352 Ill. 348 (1933).
Other reference: 4 Op. Corp. Coun., p. 221.

INCORPORATION OF MATERIAL INTO ORDINANCE BY REFERENCE

(No. 10649—Commissioner of Buildings—A. F. G.—June 15, 1942.)

Ordinances, statutes, etc., in whole or in part, may be incorporated by reference into an ordinance, but such incorporation cannot include subsequent additions or modifications of the original so integrated, without further legislative action.

Citations:
Cases: Knapp v. Brooklyn, 97 N. Y. 520 (1884).
Culver v. People, 161 Ill. 89 (1896).
City of Charleston v. Johnson, 170 Ill. 336 (1897).
Town of Cicero v. McCarthy, 172 Ill. 279 (1898).
People v. Crossley, 261 Ill. 78 (1913).
Other references: Sutherland on Statutory Construction, Vol. II, sec. 405.
19 Op. Corp. Coun., p. 4 (No. 9578).

B. POLICE DEPARTMENT

DESTRUCTION OF ARREST STATEMENT

(No. 10207—Commissioner of Police—C. P. H.—February 27, 1940.)

A statement made to the police at the time of his arrest by a person charged with committing a felony is part of the police records and should not be destroyed.

Citations:
Statute: IRS '39, 38: 401, 780e.
Ordinance: Mun. Code: 11-4, 193-30.
Case: The People v. Dime Savings Bank, 350 Ill. 503 (1932).

Opinion No. 10167 of January 2, 1940 to the Commissioner of Police holds substantially the same as the above opinion.

RELEASE OF AUTOMOBILE BY POLICE DEPARTMENT

(No. 10215—Commissioner of Police—G. A. H.—March 9, 1940.)

An automobile in possession of the custodian of police should not be released to a relation of the deceased owner except upon presentation of a certified copy of an order issued by the proper court.

DISPOSITION OF AUTOMOBILE OF DECEASED

(No. 10244—Commissioner of Police—A. A. P.—April 12, 1940.)

The police custodian having possession of an automobile belonging to one deceased should not deliver the automobile to anyone except upon the presentation of a certified copy of an appropriate order entered by a court of competent jurisdiction or an affidavit under the Probate act governing the disposition of estates under five hundred dollars.

Citations: IRS '39, 31: 20, 21.
Probate act, art. 25, sec. 324 (1940).

POLICE AID TO BUILDING DEPARTMENT.

(No. 10268—Commissioner of Police—A. F. G.—May 14, 1940.)

The police department must comply with the building commissioner's request for policemen to guard buildings and otherwise enforce building regulations, but the commissioner of police may use his own judgment as to the number of men and the time necessary to execute properly such tasks.

Citations: Mun. Code: 11-3, 13-22, 13-23, 13-29.

POLICE "13-13" JOURNAL

(No. 10286—Commissioner of Police—C. P. H.—June 10, 1940.)

The publication of the magazine entitled Police *"13-13" Chicago Police Journal,* and the use of a police star marked "Chicago Police" in its advertisements, violate state statutes prohibiting deceptive advertising and also city ordinances prohibiting the imitation of any insignia adopted by the department of police.

Citations:
Statute: IRS '39, 38: 249a.
Ordinance: Mun. Code: 11-47.

DISPOSITION OF MONIES OF INSANE

(No. 10318—Commissioner of Police—A. A. P.—July 29, 1940.)

All personal property or monies belonging to a person declared insane by the courts should be turned over by the custodian of police to the conservator when certified copies of the conservator's appointment and the order of the court are presented.

Citation: IRS '39, 3: 264, 265, 274.

SUBPOENA OF POLICE RECORDS

(No. 10342—Commissioner of Police—C. P. H.—September 3, 1940.)

The department of police may comply with the terms of a subpoena *duces tecum* to produce before a notary public police records of an accident, to be used in private litigation when the city is not a party thereto.

Citations:

Statutes: Civil Practice act, sec. 58.
IRS '39, 51: 24, 36.
IRS '39, 110: 126, 182.

Cases: Kate Lotito et al. v. Guy A. Richardson et al., No. 38-c-16523 Circuit Court of Cook County.
Florence Whitney v. Beloit Dairy Company, No. 39-c-4063 Circuit Court of Cook County.

Other reference: Supreme Court Rule 19 (1).

POLICE INTERVENTION WITH SITDOWN STRIKES ABOARD SHIP

(No. 10509—Commissioner of Police—J. H. S.—July 23, 1941.)

In view of the unsettled state of the law concerning the right of seamen to engage in sitdown strikes on board ship, the city police should decline to intervene on board ship in labor disputes involving seamen except when violence has occurred. The owner of the vessel should be requested to present his grievances to the federal authorities or to federal courts where adequate redress may be obtained.

Citations:

Statutes: 18 USCA, secs. 483, 484.
46 USCA, sec. 701.

Cases: Labor Board v. Fansteel Corp., 306 U. S. 240 (1939).
The Oakmar, 20 F. Supp. 650 (1937).
The Losmar, 20 F. Supp. 887 (1937).
Peninsular and Occidental S.S. Co. v. National Labor Relations Board, 98 F. (2d) 411 (1938) cert. den., 59 Sup. Ct. 248.
Weisthoff v. American Hawaiian S.S. Co., 79 F. (2d) 124 (1935), cert. den., 296 U. S. 619.
Rees v. United States, 95 F. (2d) 784 (1938).
Hamilton v. United States, 4 Cir. 268 F. 15.
Southern Steamship Co. v. National Labor Relations Board, 120 F. 505.

OPINION OF FOREGOING SYNOPSIS

This will acknowledge receipt of your letter of July 5, 1941 with regard to labor trouble on lake boat Arthur Orr located at 106th street and Calumet River, together with the reports of the commanding officer of the 9th district police station. It appears from these reports that the contract between the owner of the boat and the seamen expired on June 30, 1941. The men refused to accept their pay and would not leave the ship. They demanded a new contract with increased pay and better working conditions. After a conference participated in by an employee of the Keystone Grain Elevator Co., a delegate of the National Maritime Union and members of the police department, including the captain of the 9th district police station, the men were persuaded to leave the boat with their belongings. There was no violence or even harsh words. You request our opinion as to the position which the police department should take on this or like occasions.

With respect to so-called "sit down" strikes on land, that is, strikes during which the employes seize and retain possession of the employer's plant, there is no question of their illegality. In *Labor Board* v. *Fansteel Corp.*, 306 U. S. 240 (1939) the Supreme Court of the United States characterized sit down strikes as "a highhanded proceeding without shadow of legal right." With respect to sit down strikes by seamen, the law appears to be in a state of formation and it is by no means easy to offer an unequivocal opinion.

The relation between the owner of a boat and seamen is the subject of extensive federal legislation. Pertinent to the present inquiry are certain sections of the Federal Criminal Code (18 U. S. Code Annotated, title 18, sections 483 and 484). Section 483 deals with inciting revolt or mutiny on shipboard and provides that any member of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, who endeavors to make a revolt or mutiny on board such vessel, etc., or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, etc., shall be fined not more than $1,000 or imprisoned not more than five years, or both. Section 484 deals with revolt or mutiny on shipboard and provides that any member of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States who usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, is guilty of a revolt and mutiny, and shall be fined not more than $2,000 and imprisoned not more than ten years.

The Federal Shipping Act (U. S. Code Annotated, title 46, section 701), enumerates a number of offenses of which seamen may be guilty. One of these offenses is willful disobedience to any lawful command at sea.

The question has recently arisen as to the applicability of these provisions of the federal code to sit down strikes by seamen. In *The Oakmar,* 20 Fed. Sup. 650 (1937) the owner of a vessel filed a libel in a court of admiralty to recover possession of the ship after the seamen had taken possession thereof in a sympathetic sit down strike to coerce the owner of the ship into establishing a higher scale of wages for members of the union to which they belonged. The court was very vigorous in its denunciation of the action of the seamen and held that they were trespassers. In *The Losmar,* 20 Fed. Sup. 887 (1937), a similar situation was involved and the same court rendered a similar opinion. Both of these cases were decided by a district court, which is a trial court. Decisions

of a trial court cannot be given the same weight as decisions of a court of review. Neither of these cases was appealed.

In *Peninsular and Occidental S. S. Co.* v. *National Labor Relations Board,* 98 Fed. (2d) 411 (1938) the National Labor Relations Board had found the steamship company to have been guilty of unfair labor practices in discharging certain members of the crews of their vessels. The company had discharged the members of the crew because they had participated in sit down strikes on board ship. They had refused to do any work, took possession of the ship, refused to let the electrical equipment furnishing light or the pumps supplying the sanitary arrangements of the ship to be used, and refused to permit any food to be served to anyone but themselves. At the time, the ship was at dock. The Circuit Court of Appeals for the Fifth Circuit held that engaging in sit down strikes and taking possession of the ships, in defiance of their officers, was at least *prima facie* evidence that the crew was guilty of mutiny. Under the circumstances, the company was justified in discharging the members of the crew. The court reversed the order of the National Labor Relations Board finding the company guilty of unfair practices. On petition for certiorari to the United States Supreme Court, the certiorari was denied. (59 Supreme Court, 248.)

In apparent conflict with the foregoing decisions is *Weisthoff* v. *American Hawaiian S. S. Company,* 79 Fed. (2d) 124 (1935). This involved a suit by members of the crew of a steamship for double pay. The steamship company resisted payment on the ground that while the ship was lying in harbor the members of the crew went on a sit down strike and refused to leave the ship until the police were called aboard. The court held that the action of the crew did not constitute a revolt or desertion so as to work a forfeiture of wages and allowed them to recover their pay. This decision in effect sanctions sit down strikes. In this case, also, the Supreme Court of the United States denied certiorari (296 U. S. 619).

In *Rees* v. *United States,* 95 Fed. (2d) 784 (1938) members of a steamship crew were prosecuted under the federal code for endeavoring to make a revolt. The crew had signed shipping articles for a voyage to South American ports and return from Jacksonville, Florida. While the vessel was in the port of Montevideo, Uruguay, the stevedores in the harbor were at strike and strike breaking stevedores were preparing to unload the cargo. Thereupon, the crew of the steamship went on a sit down strike. After the captain had threatened to put the men in irons the crew resumed work after a delay of twenty-four hours. Upon return to the United States, criminal prosecutions were instituted. The jury returned a verdict of guilty upon which the trial court entered judgment. The Circuit Court of Appeals for the Fourth Circuit affirmed the trial court and held that the men had no right to strike because the safety of shipping depends upon implicit obedience of the crew to the master of the vessel. Ample safeguards are present in the federal law to remedy any grievance which the crew might have as the result of improper treatment by the master. Of some significance is the following portion of the court's opinion (page 792):

> "The defendants contend that the crew of a vessel which is moored to a dock or is at anchor in a safe harbor have the right to strike and that the Mutiny Act, 18 U. S. C. A. Section 483, has no application to seamen in such a situation. But that question is not presented for decision in this case. As we have already pointed out, the Algic was not in fact moored to the dock or at anchor in a safe harbor, but was in such a position that the obedience of the crew to the orders of the master was essential to her safety. In such a case, the same rule is applicable as though the vessel were at sea, as this court decided in *Hamilton* v. *United States,* 4 Cir., 268 F. 15."

It is possible to draw the inference from the foregoing statement that the decision of the court may have been otherwise if the ship had been moored in a safe American harbor. This inference appears to be drawn from the case in the most recent decision which we have been able to find on the subject, *Southern Steamship Company* v. *National Labor Relations Board,* United States Circuit Court of Appeals for the Third Circuit, Case No. 7435 (1941) reported in C. C. H. Labor Law Service, volume 3, paragraph 60,476. The National Labor Relations Board had directed the company to cease and desist from certain unfair labor practices and to reinstate certain striking employes. While the ship was at dock at Houston, Texas, the crew went on a sit down strike because the company refused to meet or bargain with union delegates. The strike appeared to be for the purpose of gaining union recognition. It was contended that the sit down strike was unlawful and that the discharge of the strikers was therefore justified under the rule laid down in the *Fansteel* case. The court said:

> "With this contention we cannot agree. The strikers were guilty of no violence or other unlawful conduct. They did not take or hold possession of the ship, as the captain and chief engineer both admitted at the hearing. They merely withheld their services during the eleven hours of the strike, without interferring in any way with the work of the officers and non-striking members of the crew. Sitting on the poop deck, the usual place for members of the crew to meet when off duty, did not make them trespassers, for the ship was their home and they were at no time ordered to leave it. We conclude that the strike was not so unlawfully conducted as to deprive the participants of the protection of the act under the doctrine of the *Fansteel* case."

The court distinguished the case from *Rees* v. *United States* because in the present case the ship was docked in a safe American harbor. It also distinguished the present case from the *Rees* case on the ground that they did not take possession of the ship but merely withheld their services and maintained sufficient steam for the operation of all of the ship's sanitary and safety appliances. One statement which the court made which may be of some significance is that the crew were at no time ordered to leave the ship. Apparently the inference to be drawn is that if the crew had been requested to leave the ship their refusal to do so would have made them trespassers.

We are advised by the clerk of the United States Circuit Court of Appeals that the court has ordered the enforcement of its decree stayed until August 1, 1941 before which time petition for writ of certiorari will be filed to the United States Supreme Court. The decision of the court accordingly is not yet final.

It is obvious from the foregoing that the law pertaining to sit down strikes by seamen is not sufficiently settled to permit a conclusive opinion. The latest expression of a circuit court of appeals, which is one stage below the United States Supreme Court in authority, indicates that seamen upon a vessel docked in an American port may stand on a different footing from workers on land. Since the trend of recent federal legislation and federal judicial decision appears to be in the direction of sanctioning and encouraging collective bargaining and strikes to enforce the demands of labor, it is not unlikely that the United States Supreme Court will give its approval to the action of the Circuit Court of Appeals in the *Southern Steamship* case and thus uphold the right of seamen to engage in a sit down strike under certain circumstances.

If the right of seamen to engage in sit down strikes is denied, it would appear that the seamen so striking are guilty of federal offenses. In any event, the owner of the vessel has the right to apply to courts of

admiralty for possession of the vessel and can obtain an order of court requiring the seamen to leave the vessel. The entire matter seems to be one which is primarily the subject of federal jurisdiction. In view of the unsettled state of the law, it is our recommendation that in future incidents of this character the police department of the city of Chicago should decline to intervene on board ship in labor disputes involving seamen except when violence has occurred. The owner of the vessel should be requested to present his grievances to the federal authorities or to the federal courts where adequate redress may be obtained.

APPREHENDING A FUGITIVE FROM JUSTICE

(No. 10540—Commissioner of Police—C. P. H.—October 8, 1941.)

The police have the legal right upon request of an out-of-state policeman to arrest a person residing in Chicago who had been indicted in his state for malicious desertion; to file a complaint in the Municipal Court against said resident, obtain a fugitive warrant for his arrest and take him into custody according to the practice and law concerning fugitives from justice. In taking such action, Chicago police will not be liable for malicious prosecution or false arrest as there is ample cause for their action.

Citations:

Statutes: 18 USCA 662.
IRS '41, 60: 1 to 17.
IRS '41, 38: 662 to 664.

Ordinance: Mun. Code: 11-24.

Cases: Hyatt v. People, 188 U. S. 691 (N. Y. 1903).
Kincaid Tr. & Sav. Bank v. Hawkins, 234 Ill. App. 64 (1924).
People v. Wirz, 349 Ill. 80 (1932).
People v. Meyering, 348 Ill. 17 (1932).
People v. Traeger, 340 Ill. 147 (1930).
People v. Toman, 362 Ill. 232 (1935).
People v. Nash, 366 Ill. 186 (1937).
People v. Meyering, 358 Ill. 589 (1934).
People v. Martin, 357 Ill. 109 (1934).
People v. Munie, 354 Ill. 490 (1933).
People v. Meyering, 349 Ill. 198 (1932).
People v. Meyering, 345 Ill. 598 (1931).
People v. Baldwin, 341 Ill. 604 (1930).
Harpham v. Whitney, 77 Ill. 32 (1875).
Knickerbocker Ice Co. v. Scott, 76 Ill. App. 645 (1898).
Berner v. Prairie State Bank, 281 Ill. App. 31 (1935).
Glenn v. Lawrence, 280 Ill. 581 (1917).
Ressler v. Peats, 86 Ill. 275 (1877).
Slomer v. People, 25 Ill. 58 (1860).
Davis v. Wilson, 65 Ill. 525 (1872).
Hansen v. Lowe, 100 P. (2d) 51 (Ida., 1940).
Galarza v. Sprague, 284 Ill. App. 254 (1936).

RIGHT OF SPECIAL POLICEMEN TO CARRY CONCEALED WEAPONS

(No. 10611—C. P. H.—March 2, 1942.)

Special policemen are authorized to carry concealed weapons *only* at the fixed places designated in the certificates of appointment and not while traveling from one such place to another.

Citations:
Statute: IRS '41, 38: 155.
Ordinance: Mun. Code: 173-3, 173-7, 173-11, 193-30.
Case: Komorowski v. Boston Store, 263 Ill. App. 88 (1931).
Other references: 9 Op. Corp. Coun., p. 1030.
11 Op. Corp. Coun., p. 159.
15 Op. Corp. Coun., p. 714.
18 Op. Corp. Coun., p. 106 (Nos. 8891, 8141).
18 Op. Corp. Coun., p. 107 (No. 8715).
19 Op. Corp. Coun., p. 28 (No. 9500).
20 Op. Corp. Coun., p. 21 (No. 9793).

POLICEMAN ENGAGING IN OTHER OCCUPATION

(No. 10618—Corporation Counsel, Green Bay, Wis.—F. V. M.—March 12, 1942.)

A police officer is prohibited from engaging in any other business.

Citation: Department of Police, Rules and Regulations, Rule 378.

DELOUSING AT WOMEN'S DETENTION HOME

(No. 10621—Committee on Finance—F. V. M.—March 19, 1942.)

The police department has the power to require all women under arrest and held in the place of detention to submit to the process of delousing.

Citations:
Statute: IRS '41, 24: 23-1, 23-81.
Other reference: McQuillan on Mun. Corp., Vol. 3, 2nd Ed., sec. 936.

EMBEZZLED FUNDS IN THE CUSTODY OF THE POLICE

(No. 10661—Commissioner of Police—C. P. H.—July 1, 1942.)

Embezzled funds which came into the possession of the police, restitution for which has been made, are the property of the person who has made such restitution and should be turned over to him by the police.

CUSTODY OF PERSONAL EFFECTS OF PERSON ACCIDENTALLY KILLED

(No. 10715—Public Administrator of Cook County—C. P. H.—November 30, 1942.)

In cases where under the law the duty of conducting an inquest devolves upon the coroner, his authority to take possession and control of personal property of the deceased extends only to such property as is found upon or near the body of the deceased. The authority of the Commissioner of Police is broader. In the absence of specified procedure he has the right to exercise his discretion in determining procedure in particular instances, and such action is not subject to review or control by the courts. Rules which direct the police, under circumstances of accidental or violent death to proceed to the home of the deceased, obtain entry, search the premises, and, in some instances, remove and turn over to the coroner articles of value, are a lawful exercise of such discretion.

Citations:

Statute: IRS '41, 31: 1 to 29.

Cases:
Peoria Cordage Co. v. Industrial Board, 284 Ill. 90 (1918).
MacGregor v. Miller, 324 Ill. 113 (1926).
Edwards v. Thompson, 262 Ill. App. 520 (1931).
Peo. v. Schuettler, 209 Ill. App. 588 (1918).
Coughlin v. Chicago Park District, 364 Ill. 90 (1936).
City of Chicago v. Kirkland, 79 F. 2nd 963 (C. C. A. 7th, 1935).
McCormick v. Burt, 95 Ill. 263 (1880).
Peo. v. May, 251 Ill. 54 (1911).
Casey v. Adams, 234 Ill. 350, 355 (1908).
Casey v. Adams, 137 Ill. App. 404, 410 (1907).
Eckels v. Maher, 137 Ill. App. 45, 58 (1907).
Collins v. Weigselbaum, 126 Ill. App. 158, 165 (1906).
Wolbach v. Rubens, 307 Ill. 186, 190 (1923).
Culver v. City of Streator, 130 Ill. 238 (1890).
Chicago v. Williams, 182 Ill. 135 (1899).
Wilcox v. Chicago, 107 Ill. 334 (1883).
Nicastro v. Chicago, 175 Ill. App. 634 (1912).
Tollefson v. City of Ottawa, 228 Ill. 134 (1907).

Other references: 20 Op. Corp. Coun., p. 116 (No. 9934).

OPINION OF FOREGOING SYNOPSIS

We have your letter wherein you state that when a person dies suddenly or by accidental means away from his home the police, after making an investigation at the scene of the accident or occurrence, proceed to the home of the deceased, obtain entry thereto whether or not someone is on the premises, search through the effects of the deceased, remove in some instances articles of value and turn the same over to the coroner. You claim that you have received from relatives of some of these deceased persons a number of complaints against the police, the coroner's office and your office, alleging that articles of value have disappeared during the period from the time of the death of the deceased to the time the effects of the deceased were turned over to your office by the coroner.

You state that this procedure of the police has been approved by the commanding officers of the various police districts. It is your contention that the police do not have authority under the law to take this action in such cases.

The powers and duties of the coroner are specifically defined by statute. His principal official duty is to conduct inquests to determine the manner in which persons come to their death where there is any reason to suppose that the death might not have been due to natural causes. (Ill. Rev. Stats. 1941, chap. 31, pars. 1 to 29; Op. Corp. Coun., Vol. XX, p. 116.)

The provisions of the statute giving the coroner authority to take possession and control of personal property of deceased persons are as follows:

> "Par. 21. Disposition of property, etc.) When any valuable personal property, money or papers, are found upon or near the body upon which an inquest is held, the coroner shall take charge of the same and deliver the same to those entitled to its care or possession; but if not claimed, or if the same shall be necessary to defray the expenses of the burial, the coroner shall, after giving ten days' notice of the time and place of sale, sell such property, and after deducting coroner's fees and funeral expenses, deposit the proceeds thereof, and the money and papers so found, with the county treasurer, taking his receipt therefor, there to remain subject to the order of the legal representatives of the deceased, if claimed within five years thereafter, or if not claimed within that time, to vest in the county." (Ill. Rev. Stats. 1941, chap. 31, par. 21.)

The above quoted provisions of paragraph 21 of the statute give the coroner expressed authority to take possession and control of the personal property found upon or near the body of a deceased person upon which an inquest is to be held. It is made the duty of the coroner, by the provisions of paragraph 20 of the statute, to take a careful inventory of all such personal property that comes into his possession and to state on his records what has been done with the same. (Ill. Rev. Stats. 1941, chap. 31, par. 20.)

In this connection the commissioner of police has issued orders directing the police to turn over to the coroner all personal property which they find upon or near the body of a deceased person who dies suddenly or comes to his death by accidental means or by violence, to take the coroner's receipt for such property on a regular inventory, and to deliver it to the police custodian. (Circular Order No. 12, October 31, 1931 and Circular Order No. 231, April 2, 1924; Op. Corp. Coun., vol. XII, p. 826.) The coroner also has issued instructions to the police which are substantially the same as the orders issued by the commissioner of police. The instructions provide in part as follows:

> "The police shall bear in mind that the coroner is the custodian of all personal property or effects of a person (or persons) who meets death accidentally or otherwise (coroner's case) and such personal property or effects must be immediately inventoried by the police and delivered to the office of the coroner, Room 511, County Building, where such personal property or effects shall be held for the benefit of the heirs, or relatives, that the personal property will then be returned to them upon proper presentment to the coroner's office that there are such heirs or relatives of deceased. Where no heirs or relatives are within the State or City the coroner will then notify the Public Administrator's office of such personal property or effects and this is to be done by the coroner's office only. * * *"

The Supreme Court of Illinois in passing upon the powers and duties of the coroner has held that he can act only within his statutory authority and he cannot act beyond it. [*Peoria Cordage Co.* v. *Industrial Board,* 284 Ill. 90 (1918).] It is clear from a cursory reading of the provisions of the statute quoted above that the legislature did not give the coroner authority to take possession and control of personal property located at the home of a deceased person, upon whose body an inquest is to be held, when the death of such person occurs elsewhere than at his home. It therefore necessarily follows that the coroner does not have authority to take possession or control of such property.

In order to ascertain the authority of the police with respect to the custody and disposition of such personal property, it is necessary to examine their powers and duties. The city of Chicago possesses power to enact an ordinance for the establishment and operation of a police department. The source of this power is contained in the Cities and Villages Act. (Ill. Rev. Stats. 1941, chap. 24, pars. 9-16, 23-1, 23-78, 23-105 and 23-106.) Pursuant to this statutory authority the city council by ordinance established the police department and created the office of commissioner of police and prescribed his powers and duties. (Mun. Code of Chicago, secs. 11-1 to 11-47.) Under section 11-3 of the code, the commissioner of police is vested with powers to manage and control all matters relating to the police department, its officers and members.

By authority of the power vested in him by the above provisions of the code, the commissioner of police on December 13, 1933 promulgated rules and regulations for the government and control of the police department. Rule 112 imposes the duty on the police to protect life and property, preserve public peace, prevent crime, arrest and prosecute violators of the law and to enforce all laws and ordinances within the city. Rules 501 to 503 make it the duty of the police, in all cases where a person dies suddenly or by accidental means or by violence, to immediately notify the coroner, to ascertain the identity of the deceased person, and to conduct a full and complete investigation to determine the cause and manner of death. In this respect the police and the coroner have concurrent jurisdiction. (Ill. Rev. Stats. 1941, chap. 31, par. 10.) However, the findings of a coroner's jury are merely advisory to the public authorities charged with the administration of the criminal law. [*Peoria Cordage Co.* v. *Industrial Board,* 284 Ill. 90 (1918).]

In accordance with the above rules and regulations of the department, the commissioner of police has heretofore issued instructions making it the duty of the police, in cases where a person dies suddenly or comes to his death by accidental means or by violence away from his home, to go to the home of such deceased person for the purpose of completing their investigation; and, if no heir or relative is present or cannot be located, to enter the premises and take an inventory of the personal property of the deceased person and deliver the same to the coroner for the purpose of protecting it; or if the personal property is of such character that it cannot readily be removed, then to lock the premises and deliver the keys to the same to the coroner.

By virtue of the provisions of the code and rules referred to above, the commissioner of police is charged with the duty of protecting all property within the city. Manifestly it would be impossible to specify the procedure that is to be followed in performing this duty in all cases. In the absence of a specified procedure, the commissioner of police has the right to use his judgment and discretion in determining the manner in which this duty is to be performed in particular instances.

It is a well established principle of law that where an officer, in the exercise of his judgment and discretion, has considered and determined

what his course of action is to be in the performance of an official duty, his action will not be subject to review or control by the courts, unless he abuses his discretion. [*MacGregor* v. *Miller,* 324 Ill. 113 (1926); *Edwards* v. *Thompson,* 262 Ill. App. 520 (1931); *People* v. *Schuettler,* 209 Ill. App. 588 (1918); *Coughlin* v. *Chicago Park District,* 364 Ill. 90 (1936); *City of Chicago* v. *Kirkland,* 79 F. 2nd 963 (C. C. A. 7th 1935).] It has been held that a public officer when acting in good faith cannot be held liable for erroneous judgment in a matter submitted to his determination. [*Summers* v. *The People,* 109 Ill. App. 430, 433 (1903); *McCormick* v. *Burt,* 95 Ill. 263 (1880); *The People* v. *May,* 251 Ill. 54 (1911).]

In order for him to carry out this duty imposed upon him by law, the commissioner of police, in the exercise of his sound judgment and discretion, issued the above instructions to the members of the police department which establish the procedure to be followed by them to protect the personal property of deceased persons in the cases specified therein. Therefore the action taken by the commissioner of police in issuing these instructions to the police is not arbitrary, capricious or unreasonable.

The courts have repeatedly held that policemen in the performance of their duties have the right to enter upon private premises. [*Casey* v. *Adams,* 234 Ill. 350, 355 (1908); *Casey* v. *Adams,* 137 Ill. App. 404, 410 (1907); *Eckels* v. *Maher,* 137 Ill. App. 45, 58 (1907).] It is presumed that policemen and other public officials in acting under the requirements of the law will act fairly, honestly and with good motives. [*Collins* v. *Weigselbaum,* 126 Ill. App. 158, 165 (1906); *Wolbach* v. *Rubins,* 307 Ill. 186, 190 (1923).] Furthermore the city is not liable for the negligent acts of the officers and members of the police department in the discharge of their official duties. [*Culver* v. *City of Streater,* 130 Ill. 238 (1890); *Chicago* v. *Williams,* 182 Ill. 135 (1899); *Wilcox* v. *Chicago,* 107 Ill. 334 (1883); *Nicaster* v. *Chicago,* 175 Ill. App. 634 (1913); *Tollefson* v. *City of Ottawa,* 228 Ill. 134 (1909); Op. Corp. Coun., Vol. XVIII, p. 896; Vol. XIX, p. 471.]

However, your office recently informed the commissioner of police that you had received the complaints against the police referred to in your communication relative to the loss of certain deceased persons' personal effects. All of these complaints were investigated by the chief inspector of the police department and in his report to the commissioner of police he stated "as * * * the investigating officers followed the customary procedure in these cases and the property of these deceased persons was handled in accordance with existing orders, it is not believed any department action is warranted."

In reference to the jurisdiction and control of the public administrator over personal property of deceased persons, section 166 of the probate act provides that "when a decedent dies intestate owning any personal estate in this state and there is no person in this state having a prior right to administer his estate, the public administrator of the county of which the decedent was a resident, or of the county where the personal estate is situated, if the decedent was a non-resident of this state, may take such measures as he deems proper to protect and secure the personal estate * * *." However, these provisions of the probate act confine the jurisdiction of the public administrator to those cases where a decedent dies intestate owning a personal estate in this state. Under sections 95 and 96 of the act he can only act in such cases after he has filed a proper petition in the Probate Court and has received letters of administration therefrom. (Ill. Rev. Stats. 1941, chap. 3, pars. 318, 247 and 248.)

It is therefore our opinion that the police have authority, in cases where a person dies suddenly or comes to his death by accidental means or by violence, to go to the home of such deceased person for the purpose

of completing their investigation; and, if no heir or relative is present or cannot be located to enter the premises and take an inventory of the personal property of the deceased person and deliver the same to the coroner for the purpose of protecting it; or if the personal property is of such a character that it cannot readily be removed, then to lock the premises and deliver the keys to the coroner.

DISPOSITION OF RETRIEVED PROPERTY

(No. 10719—Commissioner of Police—A. A. P.—December 9, 1942.)

Money or other personal property dropped by the owner and in his presence picked up by another who has knowledge of the ownership thereof, is not to be treated as lost property but must be turned over to the owner.

Citations:
Statute: IRS '41, 50: 27, 50: 28.
Cases: Peo. v. Csontos, 275 Ill. 402 (1916).
Peo. v. Cope, 345 Ill. 278 (1931).

DESTRUCTION OF CRIMINAL RECORDS OF IDENTIFICATION

(No. 10721—Commissioner of Police—C. P. H.—December 14, 1942.)

Law enforcing officers have the right to take photographs and fingerprints and to make other records of identification of persons accused of crime, and there is no authority to remove from the files of the police department any such photographs, fingerprints or other records of identification, even though such person is acquitted of the accusation against him.

Citations:
Statutes: IRS '41, 24: 9-16, 23-1, 23-78, 23-105, 23-106.
IRS '41, 38: 780 a to 780 g; 401.
Ordinance: Mun. Code: 11-1 to 11-47, 25-27.
Cases: Peo. v. Dime Savings Bank, 350 Ill. 503 (1932).
Hodgeman v. Olsen, 86 Wash. 615 (1915), 150 P. 1222.
Miller v. Gillespie, 190 Mich. 423 (1917), 163 N. W. 22.
Barletta v. McFeeley, 113 N. J. Eq. 67 (1933), 166 A. 144.
Molineux v. Collins, 177 N. Y. 395 (1904), 69 N. E. 727.
United Cork Companies v. Volland, 365 Ill. 564 (1937).
Consumers' Stores v. Ill. Com. Comm., 348 Ill. 615 (1932).
Peo. v. Taylor, 342 Ill. 88 (1930).
Peo. v. Clark, 268 Ill. 156 (1915).
Canadian Bank of Commerce v. McCrea, 106 Ill. 281 (1882).
Reed v. Chicago Rys. Co., 231 Ill. App. 58 (1923).
Davis v. Abstr. Constr. Co., 121 Ill. App. 121 (1905).
U. S. v. Kelly, 59 Fed. (2nd) 67, 83 A. L. R. 122 (1932).
Other references: 18 Op. Corp. Coun., p. 109 (No. 7979).
Op. Atty. Gen'l of State of Ill., Vol. 1932, p. 723.
23 R. C. L., pp. 169, 170.
18 R. C. L., p. 1199.

OPINION OF FOREGOING SYNOPSIS

We have your letter wherein you ask our opinion as to whether or not you should grant the request of * * * to remove from the files of the police department the photographs, the fingerprints, and other records of identification of his client, * * *. Mr. * * * contends that all of these records should be withdrawn from the files because * * * does not now have a police record in that he was granted a full pardon for the felony of which he was convicted and sentenced in the state of Minnesota and was acquitted of all of the offenses for which he was arrested in the city of Chicago.

The criminal history sheet showing the record of * * * on file in the bureau of identification reads as follows:

July 31, 1926: Received at State Penitentiary, Stillwater, Minnesota for grand larceny for term of 10 years.

May 21, 1935: Full pardon granted by Board of Pardons of the State of Minnesota for the above sentence.

November 18, 1934: Arrested by United States Marshal, Chicago, Illinois, for false oath before Examiner of Naturalization.

April 29, 1935: On motion of United States Attorney, above case dismissed by Judge John P. Barnes. (No. 28527.)

November 22, 1937: Arrested for larceny by bailee by Officers Condon and O'Rourke, Detective Bureau.

November 22, 1937: Photographs and fingerprints taken by Bureau of Identification at time of above arrest. (C-85131.)

December 17, 1937: Above case of larceny by bailee dismissed by Judge Holland, Municipal Court No. 1528870.

September 2, 1942: Found not guilty by Judge Harold G. Ward on confidence game charge. Officers Sloey and Rourke, State's Attorney's Office. (D-17561.)

The photographs and fingerprints of * * *, referred to above, were taken by the police on November 22, 1937, the day he was arrested by authority of a capias issued on November 5, 1937 by the Municipal Court of Chicago pursuant to a complaint signed and filed on November 5, 1937 by one * * * charging him with the crime of larceny by the bailee. The complaint alleged that on October 1, 1937 he came into possession and care of an oil painting valued at $14.00, as bailee for the owner thereof, and without the consent of the owner he unlawfully converted the painting to his own use with intent to steal the same. According to the court records, this complaint was set for hearing on December 17, 1937 but it was dismissed for want of prosecution on that day because the complainant failed to appear and testify.

The police took these photographs and fingerprints of * * * for the purpose of completing their criminal history record which they had made of his above mentioned previous conviction, sentence and imprisonment, for a felony he committed in the state of Minnesota, and of his subsequent full pardon for this crime granted by the Board of Pardons of the state of Minnesota. According to the copy of the pardon attached to your communication, the pardon was granted upon the grounds that "he served four years and eight months on his sentence and if deported his wife and two children, all American born, would become public charges."

In order to ascertain the authority of the police with respect to taking photographs, fingerprints and other records of identification of persons, it is necessary to examine their powers and duties. The city of Chicago

possesses power to enact an ordinance for the establishment and operation of a police department. The source of this power is contained in the Cities and Villages Act. (Ill. Rev. Stats. 1941, chap. 24, secs. 9-16, 23-1, 23-78, 23-105 and 23-106.) Pursuant to this statutory authority the city council by ordinance established the police department and created the office of commissioner of police and prescribed his powers and duties. (Mun. Code of Chicago, secs. 11-1 to 11-47.) Under section 11-3 of the code, the commissioner of police is vested with power to manage and control all matters relating to the police department, its officers and members. Section 11-4 of the code makes it the duty of the commissioner of police to keep a record of all persons arrested, a complete history of each person charged with having committed a felony, which shall include a record of all orders entered in the proceedings and the final disposition thereof, and such other books and records as may be required by the business of the department. Under section 25-27 of the code, it is the duty of the commissioner of police to prescribe such rules and regulations for the government of the police department as he shall deem necessary and proper.

By authority of the power vested in him by the above provisions of the code, the commissioner of police on December 13, 1933 promulgated rules and regulations for the administration of the police department. Under rules 204 to 215 of the department it is the duty of the bureau of identification to photograph, fingerprint, and keep a complete record of identification and information of all persons found to have a criminal record and of all known offenders and suspects submitted by the police, and not to destroy the same except upon written order of the commissioner of police.

The Supreme Court of Illinois has held that to entitle a record to the character of a public record it is not necessary that it be made by an expressed statute to be kept, nor that the nature of the office should render the record indispensable. It is sufficient that it be directed by the proper authority to be kept and that it be kept according to such directions. [*People* v. *Dime Savings Bank,* 350 Ill. 503, 511 (1932).] All of the photographs, fingerprints and other records of * * * contained in the files of the bureau of identification are required to be kept under the provisions of the code and the rules of the department referred to above and hence under this decision these records are public records.

The weight of authority is to the effect that public records and documents kept in the manner designated by law cannot be removed or destroyed for any reason by anyone who happens to have them in his custody or possession. (23 R. C. L., pp. 169 and 170.) And the courts have uniformly held that they will not direct public officials to remove or destroy police records such as those under consideration here.

In the case of *Hoedgeman* v. *Olson,* 86 Wash. 615 (1915), 150 P. 1222, the plaintiff sought to compel the destruction of certain pictures held by the defendant, as superintendent of the state reformatory, and to enjoin their retention and circulation. The plaintiff was convicted of grand larceny and sentenced to serve a term of not less than two nor more than 15 years in the penitentiary. He began serving his term in January, 1912, was paroled in February, 1913, and was granted a full pardon by the governor in January, 1914. The court in dismissing the action stated on page 621:

> * * * "We do hold that those charged with the custody of persons who have been convicted of crime and incarcerated in our penal institutions have the implied power to take such pictures, descriptive measurements and data, and to retain them for reasonable future use in the detection, apprehension and identification of criminals, and to

that end may send such pictures and data to police officers elsewhere in the state when so requested in good faith."

In the case of *Miller* v. *Gillespie,* 196 Mich. 423 (1917), 163 N. W. 22, 83 A. L. R. 130, a mandatory injunction to compel the destruction of all police department records, including the personal description of the plaintiff, who had been maliciously arrested and subsequently acquitted of the crime charged, was denied on the ground that the plaintiff was not entitled to the relief asked for. The court said, page 428:

> "The opinions in some of the cases I have cited exhaustively review the subject. None of them is authority for granting relief in the case at bar, unless it can be said that the mere preservation in the files of the police department of a report proper to be made in the first instance—a true report—exposes plaintiff to ridicule, obloquy, or disgrace, I am of opinion that it does not, and, without denying the jurisdiction of a court of equity to afford a remedy for a wrongful invasion of privacy, conclude that the plaintiff is not entitled to the relief asked for, and that the decree must be affirmed, without costs."

In the case of *Bartletta* v. *McFeeley,* 113 N. J. Eq. 67 (1933), 166 A. 144, it was held that a court of equity will not order the surrender of photographs, fingerprints and measurements of one arrested on a criminal charge for which he was not later indicted. The court said, page 69:

> "I am doubtful of the authority of this court to order an alteration of a record of the police department in the absence of proof that the record may be used to the injury of complainant. A precedent which might lead to the alteration or suppression of criminal complaints would be dangerous. Complainant's plight is not serious enough to induce the court to exercise the delicate power of ordering the record changed."

In the case of the *Matter of Molineux* v. *Collins,* 177 N. Y. 395 (1904), 69 N. E. 727, it was held that mandamus will not lie to compel the superintendent of prisons to destroy or surrender a photograph, description, and measurement of one sentenced to a state prison, which the law requires the superintendent to secure and preserve, even though the prisoner's sentence is afterwards reversed and he is subsequently acquitted of the charge against him. The court said, page 399:

> "While the courts can command the superintendent of prisons to do his duty, it is not his duty to give up a record made under the authority of a statute, and until the legislature makes it his duty to surrender the record in question it should remain in his custody, because the state put it there and has not authorized its removal. An innocent man accused of crime is sometimes compelled to make sacrifice and undergo suffering for the benefit of society. Like payment of taxes and service upon juries, it is part of the price paid for the privilege of living in a country governed by law."

We also have taken into consideration the act creating the bureau of criminal identification and investigation of the state of Illinois, adopted July 2, 1931. The purpose of the state bureau is to procure from any source and file for record all photographs, plates, outline pictures, measurements, descriptions and information of all persons who have been convicted of felonies or imprisoned for violation of the laws of the United States or any state and all well-known habitual criminals. It is the duty of the state bureau to furnish this information upon request to all peace officers of the United States or any state for the administration of the criminal laws. (Ill. Rev. Stats., chapter 38, paragraphs 780a to 780g.)

Section 5 of the act, requiring sheriffs and chief police officers to furnish copies of fingerprints to the state bureau, provides as follows:

> "Sheriffs and police officers to furnish fingerprints to bureau.) It is hereby made the duty of the sheriffs of the several counties of this state and of the chief police officers of all cities, villages and incorporated towns in this State to furnish to the bureau, daily, copies of fingerprints on standardized eight by eight inch cards, and descriptions, of all persons who are convicted of felonies; and of all persons in whose possession at the time of arrest are found goods or property reasonably believed by such sheriffs or chief police officers to have been stolen; and of all persons in whose possession are found burglar outfits or burglar tools or burglar keys or who have in their possession high power explosives intended to be used for unlawful purposes or who are in possession of infernal machines, bombs or other contrivances, in whole or in part, intended to be used for unlawful purposes; and of all persons who, at the time of arrest, are in possession of firearms or other deadly weapons, intended to be used for unlawful purposes; and of all persons who have in their possession, inks, dye, paper or other articles necessary in the making of counterfeit notes, or in the alteration of bank notes or dies, molds or other articles used in the making of counterfeit money and intended to be used by them for such unlawful purposes. All photographs, finger prints or other records of identification so taken shall, upon the acquittal of the person charged with the crime, or upon his being released, without being convicted, be returned to him." (Ill. Rev. Stats. 1941, chap. 38, par. 780e.)

The above quoted provisions of the act impose the duty on the commissioner of police to furnish to the state bureau copies of fingerprints and descriptions of persons convicted of felonies and of persons arrested in the cases therein enumerated. These provisions of the act further provide that all photographs, fingerprints and other records of identification so taken of a person charged with any of the crimes specified shall be returned to him upon being acquitted or released.

These latter provisions of the act are in derogation of the common law which prohibits the removal of public records as expressed in the decisions quoted from above. It is a cardinal rule of statutory construction that such statutes be strictly construed. [*United Cork Companies* v. *Volland,* 365 Ill. 564 (1937), 7 N. E. 2nd 301; *Consumers' Sanitary C & B Stores* v. *Ill. Com. Com'n,* 348 Ill. 615 (1932), 181 N. E. 411; *People* v. *Taylor,* 342 Ill. 88 (1930), 174 N. E. 59.] A statute is not to be construed as changing the common law further than its terms expressly declare. [*People* v. *Clark,* 268 Ill. 156, 163 (1915); *Canadian Bank of Commerce* v. *McCrea,* 106 Ill. 281 (1882); *Reid* v. *Chicago Rys. Co.,* 231 Ill. App. 58 (1923); *Davis* v. *Abstract Const. Co.,* 121 Ill. App. 121 (1905); 25 R. C. L., p. 1054.]

The authority of the police to take the original photographs and fingerprints, and to make other records of identification of persons, and to make other original records of identification of persons arrested is not derived from this or any other act. (Op. Corp. Coun., Vol. XVIII, p. 109, No. 7979; Op. of the Attorney General of the State of Illinois, Vol. 1932, p. 723.) However, the courts have recognized the right of law enforcing officers to make such records of persons accused of crime in the absence of a statutory grant giving them such authority. [*United States* v. *Kelly,* 59 Fed. (2nd) 67, 83 A. L. R. 122, 127; 18 R. C. L., p. 1199.]

It necessarily follows that these latter provisions of the act quoted above, authorizing the removal of the records specified therein, are applicable only to the copies of the records expressly required to be furnished

to the state bureau by the police department, under the provisions of the act quoted above; and manifestly they do not authorize the removal of the original records of the police department to which the above section of the act makes no expressed reference whatsoever. Furthermore under the provisions of the criminal code it is a crime for any public officer or any person to withdraw, falsify or avoid any record belonging to any public officer in this state. (Ill. Rev. Stats. 1941, chap. 38, par. 401.)

It is therefore our opinion that you do not have authority to remove from the files of the police department any photographs, fingerprints or other records of identification or information pertaining to * * *.

C. BOARD OF HEALTH

ARRESTS BY BOARD OF HEALTH EMPLOYEES

(No. 10203—Board of Health—C. P. H.—February 20, 1940.)

The board of health may properly adopt a resolution designating the officers and employees of the board who shall have power to make arrests, but such arrests may be made only when a violation of the health provisions of the city code is committed in the presence of the officer or employee so empowered to make arrests.

All violations which do not occur in the presence of designated employees must be prosecuted by a court complaint and summons.

Citations:
Statute: IRS '39, 24:65, 65.75, 65.77, 80, 95.
Ordinance: Mun. Code: 9-1, 9-5, 25-4, 25-27.
Cases: Arms v. Ayer, 192 Ill. 601, 611 (1901).
People v. San Fillippo, 255 Ill. App. 554, 556 (1929).
Opinion: Op. Corp. Coun. Vol. XIX, p. 13.

SIGNATURES ON BOARD OF HEALTH CERTIFICATES

(No. 10205—Board of Health—C. P. H.—February 27, 1940.)

The board of health may provide by resolution that the president or any other employee may sign certificates certifying that multiple dwelling houses hereafter erected conform to the plumbing and drainage requirements of the code.

Citation: Mun. Code: 9-1, 9-4, 44-14.

MILK REGULATIONS OF BOARD OF HEALTH

(No. 10206—Board of Health—C. P. H.—February 27, 1940.)

Regulations of the board of health in regard to milk and milk products which are designed to prescribe permanent rules of conduct are

not proper as administrative regulations but should be enacted by the city council.

Citation: IRS '39, 24: 65.77.

PARENTS' CONSENT FOR BIRTH CERTIFICATE OF ILLEGITIMATE CHILD

(No. 10233—Board of Health—C. P. H.—April 1, 1940.)

The written consent and affidavit of the father and the mother of an illegitimate child should be obtained before recording their names as the parents on the birth certificate and on the records thereof kept by the board of health.

Citations:
Statute: IRS '39, 111½: 38, 47, 48.
Ordinance: Mun. Code: 93-2.

CITY MILK RULES AFTER STATUTE PASSED

(No. 10236—President, Board of Health—W. V. S.—April 3, 1940.)

Under the Milk Pasteurization Plant Act of 1939, the city board of health may enforce those rules and regulations which are more stringent than or are not inconsistent with the state law, but not those rules which permit something which the state act prohibits.

Notwithstanding that an amendment to the grade A milk bill in the General Assembly was passed by both houses, the omission of such amendment in the bill presented and approved by the Governor renders such bill not in force.

Citations:
Constitution: Illinois, art. V, sec. 16.
Statutes: IRS '39, 56½: 115-134, 135-151.
IRS '39, 111½: 22.
Ordinance: Mun. Code: 9-11.
Case: People v. Lueders, 283 Ill. 287 (1918).
Other references: Senate Bill, No. 287; in House, p. 7, secs. 17, 18.
House Journal, June 27, 1939, p. 44; June 28, 1939, p. 1.
Senate Journal, June 30, 1939, pp. 117-118.

TREATMENT OF VENEREAL DISEASES IN MINORS

(No. 10261—Board of Health—C. P. H.—May 1, 1940.)

The social hygiene clinic of the board of health may examine and treat minors infected, or suspected of being infected, with a venereal disease, without the consent of parents.

Citations:
Ordinance: Mun. Code: 9-1.
Case: People v. Robertson, 302 Ill. 422 (1922).
Other references: 19 Op. Corp. Coun. 32 (No. 9597).
Rules for Control of Communicable Diseases by State Director of Health, April 30, 1935.

BOARD'S CONTROL OVER BITING DOGS

(No. 10273—President, Board of Health—C. N.—May 17, 1940.)

The board of health has no power to impound biting dogs. Nor has the board of health power to issue "arrest notices," simulating court process, to induce the surrender of biting dogs by their owners. Such action is illegal.

Failure to surrender a biting dog is a violation of the Municipal Code of Chicago, but arrests should be made by a policeman or bailiff pursuant to warrant.

Citations:
Statute: IRS '39, 38: 323.
Ordinance: Mun. Code: 98-30, 98-32, 98-38, 98-40.
Other reference: 18 Op. Corp. Coun. 665 (No. 7403).

INSPECTION OF BIRTH AND DEATH RECORDS

(No. 10293—President, Board of Health—C. P. H.—June 18, 1940.)

The board of health may grant access to its records of births and deaths to newspapers for the purpose of publication, subject to such reasonable regulations as said board may adopt.

Statutes: IRS '39, 35: 9.
IRS '39, 111½: 57.8.
IRS '39, 127: 35.
Ordinance: Mun. Code: 9-12.
Case: People v. Heckard, 341 Ill. 144 (1930).
Other references: 13 Op. Corp. Coun. 227.
18 Op. Corp. Coun. 114 (No. 6901).

NOTE: Compare with No. 10651 of 6-17-42 on page 34.

VIOLATION OF STATE HEALTH LAWS

(No. 10310—Board of Health—F. V. M.—July 9, 1940.)

Upon finding a violation of the state statutes pertaining to public health, the Chicago board of health should report such violation to the Illinois department of public health.

Citations:
Statute: IRS '39, 14: 15.
Other reference: 20 Op. Corp. Coun. 127 (No. 10132).

ENDORSEMENT OF CHECKS INTENDED FOR ANOTHER

(No. 10311—President, Board of Health—F. V. M.—July 17, 1940.)

The president of the board of health may endorse checks and money orders sent to him for certified copies of birth and death records and make them payable to the county clerk, to whom the monies should have been sent. However, such endorsement should be qualified, i. e., "without recourse" or words of the same import.

Citations:
Statutes: IRS '39, 98: 85.
Negotiable Instruments law, art. III, secs. 30, 31.
Other reference: Op. Corp. Coun. (1927-28), pp. 522, 523.

COPIES OF BIRTH RECORDS TO COUNTY CLERK

(No. 10313—Board of Health—C. P. H.—July 26, 1940.)

It is mandatory upon the Chicago board of health to turn over to the county clerk a complete set of all its records of births, deaths and stillbirths.

Citations:
Statute: IRS '39, 111½: 53, 54.
Ordinance: Mun. Code: 93-1, 93-3.
Case: People v. Heckard, 341 Ill. 144 (1930).
Other reference: 18 Op. Corp. Coun. 115 (No. 6937).

JURISDICTION OVER SUBWAY DRAINAGE

(No. 10340—President, Board of Health—C. P. H.—August 27, 1940.)

The board of health has jurisdiction over plumbing and drainage installation in buildings and premises, both public and private, in the city; but the words "premises" does not include a subway. Therefore, the board has no authority over drainage work in subways.

The commissioner of subways and superhighways has sole and absolute jurisdiction over the construction and maintenance of the subway.

Citations:
Statute: IRS '39, 24: 589a.
Ordinances: Mun. Code: 8-30, 9-6, 9-7, 14-3, 19-1, 19-2, 19-3, 19-4, 31-1, 82-1, 82-2, 82-3, 83-4, 162-11.

RULES OF BOARD OF HEALTH

(No. 10352—President, Board of Health—F. V. M.—October 10, 1940.)

The board of health may make rules and regulations in relation to the sanitary conditions of the city and for the prevention and suppression of disease, not inconsistent with the provisions of the Municipal Code of Chicago. When such rules and regulations are of a legislative nature or are inconsistent with the provisions of the code they should be put into the form of ordinances and passed by the city council.

Citations: Mun. Code: 9-13, 94-2, 154-1.

MINUTES OF MEETINGS OF BOARD OF HEALTH

(No. 10358—President, Board of Health—F. V. M.—October 21, 1940.)

The city council has power to establish rules of order for the conduct of meetings of the board of health. In the absence of any such rules, it is proper for the board to follow "Robert's Rules of Order, Revised," which has been officially recognized by the council as its guide on all matters not specifically covered by council rules.

The minutes of the proceedings of the board of health should be kept by the secretary during the meetings and entered in a minute book in accordance with the rules specified in "Robert's Rules of Order, Revised."

Citations:
Statute: Cities and Villages act, art. V, sec. 76.
Other reference: Robert's Rules of Order, Revised, pp. 244-249.

FORCIBLE HOSPITALIZATION OF TUBERCULOSIS PATIENTS

(No. 10367—President, Board of Health—F. V. M.—November 13, 1940.)

If a municipal tuberculosis sanitarium is fully occupied, the board of directors of the Municipal Tuberculosis Sanitarium as officers are authorized forcibly to take an "open-case" of tuberculosis to another hospital, when necessary precautions to prevent the spread of infection are not taken by the patient. The board of health is primarily charged with this duty.

Citations:
Statutes: IRS '39, 24: 547.
IRS '39, 111½: 22.
Other reference: Regulations of Illinois Department of Public Health, re: Isolation and Hospitalization of "Open-Cases."

VOTING AT MEETINGS OF BOARD OF HEALTH

(No. 10368—President, Board of Health—F. V. M.—November 14, 1940.)

The action of the board of health at its meetings shall be governed by majority vote of all members. Therefore, a motion is lost if two members vote "Aye" and the other three members are recorded as not voting.

Citation: Mun. Code: 9-3.

PROPOSED APPOINTMENT OF ADVISORY COMMITTEE BY BOARD OF HEALTH

(No. 10369—President, Board of Health—F. V. M.—November 15, 1940.)

The board of health has no power to appoint an advisory committee, as its only powers are those prescribed by the council.

Citations:
Ordinance: Mun. Code: 9-13.
Other reference: 20 Op. Corp. Coun. 27 (No. 10142).

AFFIDAVIT ON DELAYED BIRTH REPORT

(No. 10371—President, Board of Health—F. V. M.—November 18, 1940.)

Affidavits filed to verify a birth occurring more than ten days prior to the date of the affidavit must be signed by a blood relative older than the person whose birth is being recorded. The Illinois department of public health requiring such signature, has power to prescribe the forms for reporting births. The city board of health must comply with the state rules in the registering of births.

Citation: IRS '39, 111½: 47, 49, 52.

ADOPTION OF AMENDMENTS TO MANUAL OF STATE DEPARTMENT OF PUBLIC HEALTH

(No. 10377—President, Board of Health—F. V. M.—December 4, 1940.)

The board of health has no power to amend the manual and outline of procedure for health officers for the control of communicable diseases issued by the Illinois department of public health. However, the board may pass a resolution to adopt all present and future

rules and regulations of this manual, and this will include the adoption of all future amendments to the manual adopted by the Illinois department of public health.

Citation: Manual and Outline of Procedure for Health Officers for Control of Communicable Diseases, issued by Illinois Department of Public Health April 30, 1935 and amendment to Rule 2 of said manual.

PUBLICATION OF BOARD OF HEALTH RESOLUTION

(No. 10418—President, Board of Health—F. V. M.—February 13, 1941.)

A resolution passed by the board of health, which the public is in no wise called upon to observe, is not required to be published.

PAYMENT TO DAIRY INSPECTORS FOR AUTO MAINTENANCE

(No. 10471—President, Board of Health—F. V. M.—May 12, 1941.)

The board of health may approve, and the comptroller may pay when so approved, vouchers for passenger transportation and maintenance of personally owned automobiles for those board of health employees who are performing the duties of dairy inspectors as provided in the appropriation ordinance, notwithstanding that the titles of these employees doing such inspection are sanitary inspector, quarantine officer or supervising sanitary inspector in charge.

Citation: Appropriation ordinance of 1941.

SEAL ON BIRTH AND DEATH CERTIFICATES

(No. 10484—President, Board of Health—F. V. M.—May 20, 1941.)

No seal is required on certified copies of birth and death certificates furnished by the board of health. However, if a seal is to be affixed thereon, it should be the corporate seal of the City of Chicago and not of the board of health.

Citations: IRS '39, 111½: 36, 39, 55.
Cities and Villages act, art. I, sec. 10; art. VI.

ADMITTING DEFENDANTS TO CONTAGIOUS DISEASE HOSPITAL

(No. 10487—President, Board of Health—F. V. M.—May 29, 1941.)

Defendants committed by the courts to the contagious disease hospital for treatment for venereal disease should not be admitted with-

out an accompanying formal order by the court committing the patient to this institution.

Citation: IRS '39, 23: 392.

REVOCATION AND RESTORATION OF MILK PERMITS

(No. 10500—President, Board of Health—F. V. M.—June 27, 1941.)

The board of health has the right to adopt a resolution authorizing inspectors to revoke milk permits temporarily, subject to the subsequent approval of the board. Since no emergency exists with respect to the restoration of permits, this action should be taken only by the board itself.

Citation: Mun. Code: 9-13, 9-14, 154-8.

FEE FOR BIRTH CERTIFICATES

(No. 10551—President, Board of Health—A. F. G.—October 29, 1941.)

The board of health may charge a fee of fifty cents for each certified copy of a birth certificate issued in certain cases enumerated in subparagraphs 1 and 2 of section 20 of the Vital Statistics act, except in cases where the statute exempts the applicant from payment of such fee.

Citation: Vital Statistics act, sec. 20.

EXEMPTION OF HEALTH BOARD MEMBERS FROM PERSONAL LIABILITY

(No. 10560—Alderman, 46th Ward—F. V. M.—November 18, 1941.)

It is legal for the city council to relieve, by ordinance, the members of the board of health from all personal liability for damages that may accrue to persons or property as a result of any of their acts committed in good faith in the discharge of their duties.

Citations:
Cases: McCormick v. Burt, 95 Ill. 263 (1880).
North v. Trustees of University of Illinois, 137 Ill. 296 (1891).
Summers v. People, 109 Ill. App. 430 (1903).
Kuykendall v. Tittle, 245 Ill. App. 270 (1927).

CONSENT FOR TREATMENT OF MINORS

(No. 10564—President, Board of Health—C. P. H.—November 24, 1941.)

The board of health, in the exercise of its discretion, may specify particular forms to be executed by parents or guardians of minor children to consent to the voluntary submission of such children for medical or dental treatment.

Citations:
Ordinance: Mun. Code: 9-1, 9-13, 9-18.
Cases: People v. Robertson, 302 Ill. 422 (1922).
Coughlin v. Chicago Park District, 364 Ill. 90 (1936).
People v. Webb, 256 Ill. 364 (1912).
Bransfield Co. v. Kingery, 283 Ill. App. 405 (1936).

"WAR TIME" BIRTH REGISTRATION

(No. 10601—President, Board of Health—F. V. M.—February 13, 1942.)

Birth recordings must be made in accordance with Standard Time as advanced by Act of Congress.

Citation: U. S. Public Laws, 77th Congress, No. 403.

MILK INSPECTION BY ST. LOUIS HEALTH DEPARTMENT

(No. 10639—President, Board of Health—F. V. M.—May 13, 1942.)

Milk inspection by the St. Louis health department cannot be accepted by the Chicago board of health under the present ordinance inasmuch as the St. Louis ordinance and the Chicago ordinance on production and pasteurization are not *identical.*

Citations:
Cases: Empire State Nail Co. v. American Solid Leather Button Co., 71 Fed. 588 (1896).
Bernard v. Sloan, 84 Pac. 232 (Cal., 1906).
Other reference: Judicial and Statutory Definitions of Words and Phrases, Vol. 4, p. 3380; Vol. 2, 2nd series, p. 928.

DISSEMINATION OF BIRTH RECORD INFORMATION

(No. 10651—President, Board of Health—C. P. H.—June 17, 1942.)

Birth records are confidential records. The board of health has no authority to disclose information contained in birth records either for the purpose of publication of daily lists of births or for other commercial purposes.

Custodians of birth records may issue certificates disclosing birth registration information only to persons and units of government enumerated by statute.

Inspection of birth records may be made only by local and state health officers.

Citations:
Statute: IRS '41, 111½: 55 (Vital Statistics act).
Ordinance: Mun. Code: 93-1.
Cases: Blakeslee's Storage Warehouses v. City of Chicago, 369 Ill. 480 (1938).
People v. Wiersema State Bank, 361 Ill. 75 (1935).
Sammis v. Clark, 13 Ill. 544 (1852).

OPINION OF FOREGOING SYNOPSIS

We have your letter of June 15, 1942 wherein you request our opinion as to whether or not the board of health has authority to grant the requests received from a number of persons for permission to obtain information contained in the birth records of the board of health of the city of Chicago.

The information requested is for the purpose of publishing daily lists of births occurring in the city and also for the purpose of selling and distributing certain commercial materials and articles to mothers of new born children.

The recent act amending the Vital Statistics Act passed at the last session of the General Assembly and approved July 21, 1941 provides as follows:

"Section 1. Section 20 of 'An Act to provide for the registration of all births, stillbirths and deaths in the State of Illinois, and to repeal an Act herein named,' approved June 22, 1915, as amended, is amended to read as follows:

"Section 20. The State Board of Health, any local registrar or any county clerk shall, on request furnish a certification of the record of any birth, stillbirth or death to any applicant entitled to the same upon the payment by such applicant of a fee of fifty cents ($.50) to the maker of such certification. The certification of birth shall contain only the name, sex, date of birth, and place of birth of the person to whom it relates, and none of the other data on the certificate of birth. Any such certification of a birth, stillbirth or death, when properly certified to by the State Board of Health or the local registrar or the county clerk, shall be prima facie evidence in all courts and places of the facts therein stated.

"The Custodian of the birth registration records shall not issue any other copy of such records, or any part thereof; provided, however, that

"1. The United States Census Bureau may obtain, without expense to the state, transcripts or certified copies of births, stillbirths and death certificates without payment of the fees herein prescribed;

"2. A certified copy of the certificate of birth may be issued

"(a) Upon the order of a court of record, or

"(b) Upon the specific written request by the person if of legal age, or by a parent or other legal representative of the person to whom the record of birth relates, or

"(c) Upon the specific written request by a department of the state or a municipal corporation or the federal government.

"3. *A proper local or state health officer may examine such records for the purpose of ascertaining whether the required steps have been taken to prevent ophthalmia neonatorum;* and provided further, that the State Board of Health, in its discretion and in the interests of promoting registration of births, may issue, without fee, to the parents or guardian of any or every child whose birth has been registered in accordance with the provisions of this act, a special certification of birth, limited in its statement of items from the record of birth, to the name and sex of the child, names of the parents, and date and place of birth, date recorded, and the name of the attendant." (Ill. Rev. Stats. 1941, chap. 111½, par. 55.) (Underscoring supplied.)

Under the provisions of the above act the state board of health, any local registrar or any county clerk may issue three types of documents or certifications concerning birth records in the manner designated by the act. The board of health has been designated the local registrar or receiving agent for the city of Chicago to receive the original certificates of births occurring throughout the city. (Mun. Code of Chicago, sec. 93-1.) The act further provides that a fee of fifty cents shall be paid for each certification except where such fees are expressly waived. (Op. Corp. Coun. to President Board of Health, dated October 29, 1941.)

The first document, the "certification of the record of birth," mentioned in the first paragraph of section 20, may be issued to any applicant entitled to the same upon the payment of the prescribed fee. The certification shall contain the name, sex, date and place of birth of the person to whom it relates.

The second paragraph of section 20 expressly provides that "the custodian of the birth registration records shall not issue any other copy of such records, or any part thereof," except in cases specifically enumerated in sub-paragraphs 1, 2 and 3 of the above act.

The second document, the "transcript or certified copy of a birth certificate," mentioned in sub-paragraphs 1 and 2, may be issued to the United States census bureau, without payment of the prescribed fee; and with the payment of the prescribed fee, upon the order of a court of record, to the parent or other legal representative of the person, to a department of the state, a municipal corporation and the federal government. This certification shall contain all of the information set forth in the birth certificate.

The third document, the "special certification of birth," mentioned in sub-paragraph 3, may only be issued by the state board of health, without the payment of a fee, to the parents or guardians of any child whose birth is registered in accordance with the provisions of the vital statistics act. This certification shall contain the name, sex, date and place of birth and in addition may include the name of the parents, date recorded and the name of the attendant. This sub-paragraph includes an expressed provision that "a proper local or state health officer may examine such [birth registration] records for the purpose of ascertaining whether the required steps have been taken to prevent ophthalmia neonatorum."

From the foregoing it is clear that the custodians of birth records may only issue certificates disclosing the information specified in the act to the persons and to the departments and units of government specifically enumerated therein. Furthermore the right of inspection of birth records is expressly granted only to local and state health officers.

It is a cardinal rule of statutory construction that the expression of one thing or one mode of action in a statute excludes other things or modes though not expressly prohibited. [*Blakeslee's Storage Warehouses* v. *City of Chicago,* 369 Ill. 480 (1938), 17 N. E. (2nd) 1; *People* v. *Wiersema State Bank,* 361 Ill. 75 (1935), 197 N. E. 537, 101 A. L. R. 501; *Sammis* v. *Clark,* 13 Ill. 544 (1852).]

It is obvious from the text of the act that the legislature regards the information contained in the records of births as confidential and specifically guarded against the disclosure of certain facts contained in such records by limiting the persons who are entitled to such information. Hence, the board of health is without authority to disclose the information contained in the birth records under its jurisdiction for the purpose designated herein.

BURIAL PERMITS FOR AMPUTATED HUMAN MEMBERS

(No. 10663—Board of Health—F. V. M.—July 10, 1942.)

Burial permits are not required for the burial or disposition of amputated arms, legs, etc. In this matter the Board of Health must be guided in interpretation of the Vital Statistics Act by the Department of Public Health.

Citations:
Statute: Vital Statistics Act, Secs. 1, 3, 4, 11.

INSPECTION OF MILK PRODUCING FARMS AND PLANTS

(No. 10711—Board of Health—F. V. M.—November 23, 1942.)

The ordinance which requires the Board of Health to inspect farms and plants whose products are intended for consumption within the city does not apply to plants whose entire output is sold to dealers outside of the city.

Citations:
Ordinance: Mun. Code: 154-17.

D. OTHER DEPARTMENTS AND OFFICES

CHICAGO RECREATION COMMISSION AS TREASURER OF COMMUNITY FUNDS

(No. 10175—Chicago Recreation Commission—M. H. F.—January 6, 1940.)

The Chicago Recreation Commission is created by city council resolution to exercise advisory powers only. Its powers are not limited by statute or ordinance. Hence, the commission may exercise all nominal functions commonly exercised by similar commissions and may act as treasurer in the receipt and disbursement of funds from community groups for materials to be used by the National Youth Administration in constructing recreational equipment.

The city of Chicago could not be held liable for such custody and disposition of funds by the commission.

Citations: Coun. J. (1932-33) pp. 3169-3170 (resolution).
Coun. J. (1933-34) p. 1836.

CIVIL SERVICE STATUS OF LIBRARY STAFF

(No. 10214—President, Board of Directors Chicago Public Library—F. V. M.—March 5, 1940.)

The librarian, assistant librarian, and secretary of the Chicago Public Library are not the heads of any principal department of the city, and therefore these persons must be included in the classified civil service of the city.

Citations:
Statute: Civil Service Act, sec. 11.
Cases: People v. Kipley, 171 Ill. 44 (1898).
People v. Lower, 236 Ill. 608, 610, 611 (1908).
Board of Library Directors v. Snigg, 25 NE (2nd) 420 (1940).
Other References: Op. Corp. Counsel (1872-97) p. 316.
Op. Corp. Counsel (1897-1905) p. 7.
Op. Corp. Counsel (1916-19) p. 433.

EXECUTION OF BOND BY LIBRARY DIRECTORS

(No. 10219—Chicago Public Library—J. F. G.—March 15, 1940.)

City ordinances require all persons appointed to the board of directors of the Chicago Public Library to execute a bond running to the city.

Citations:
Statutes: IRS '39, 81:2.
Cities and Villages Act, Art. VI, sec. 4.
Ordinance: Mun. Code: 25-14.
Case: Johnston v. City of Chicago, 258 Ill. 494 (1913).

CHECK OF DECEASED EMPLOYEE

(No. 10225—City Comptroller—C. H. L.—March 21, 1940.)

The city comptroller has no authority to deliver checks held by him and belonging to a decedent to the heir or heirs of a decedent, when the amount of the checks exceeds the sum of five hundred dollars.

Citations: IRS '39, 3:478.

SALE OF PLAN COMMISSION PUBLICATIONS

(No. 10257—Chief Engineer, Chicago Plan Commission—M. H. F.—April 27, 1940.)

The Chicago plan commission may be authorized by ordinance to act as a sales agency for its publications, but it could not be empowered to expend the proceeds therefrom.

Public monies may be disbursed only pursuant to valid appropriations.

Citations:
Statute: Cities and Villages act, art. VII, sec. 4.
Ordinance: Mun. Code: 25-25.

OPINION OF FOREGOING SYNOPSIS

The department is in receipt of your letter of April 24, 1940 relating to the sale of Chicago Plan Commission publications. In effect you suggest the reconsideration of the conclusion reached upon the same matter in our opinion dated March 30, 1940 wherein we made reference to section 25-25 of the Municipal Code of Chicago and expressed the view that the publications should be sold through the municipal reference librarian in manner provided by such section and not directly by your commission. You point out that your publications are such that they cannot well be handled through the librarian due to their special nature and the impracticability of preparing them in quantity in advance because of the extent and variety of the material, the cost of reproducing it and the spread in the anticipated demand for divers tabulations. For the reasons indicated you feel that it would be well for the city council to authorize your commission to accept subscriptions for the publications, sell them when ordered, and use the money received from such sales to pay the cost of preparing the copies offered for sale.

We find no legal difficulty in the preparation of an ordinance authorizing your commission to act as the selling agency for these publications which would except your agency from the general provisions in section 25-25 of the Municipal Code of Chicago. The obstacle lies in the fact that under the law your commission may not expend the moneys received from the sales or be relieved from turning them over to the city treasurer. The law is clear that public moneys may be disbursed only under valid appropriations. (Section 4, Article VII, Cities and Villages act, chapter 24, Illinois Revised Statutes, 1939.)

WITHHOLDING FUNDS DUE CITY'S CREDITOR

(No. 10258—City Comptroller—M. H. F.—April 29, 1940.)

The courts have consistently held that it is against public policy for a municipal corporation to aid in the collection of a private debt. Therefore, it is proper for the city comptroller to refuse an attorney's request that no further monies be paid a creditor of the city until such creditor pays a private judgment of a third party.

Cases: Merwin v. City of Chicago, 45 Ill. 133 (1867).
Pringle v. Guild, 118 Fed. 655 (1902).
Lamb v. Lamb, 256 Ill. App. 226 (1930).
Addyston Pipe & Steel Co. v. City of Chicago, 170 Ill. 580 (1897).

POWER OF DEPUTY CITY COMPTROLLER

(No. 10306—American National Bank and Trust Company of Chicago—J. F. G.—July 3, 1940.)

The deputy city comptroller is authorized to attach his signature to any document which the city comptroller is authorized to execute and vouchers and order for payment out of an escrow fund signed by the deputy city comptroller should be honored.

Citation: Mun. Code: 7-5.

DUTIES OF SMOKE COMMISSION

(No. 10314—President, Board of Health—F. V. M.—July 17, 1940.)

The smoke inspection and abatement commission is not required to exercise administrative authority over the department of smoke inspection and abatement. Such authority is vested in the deputy smoke inspector in charge of the department.

The smoke inspection and abatement commission should meet whenever necessary to perform its duties. Said commission should report its transactions annually in writing.

Citations: Mun. Code: 17-2, 17-3, 25-23.

MINUTES OF PLUMBING BOARD

(No. 10338—Department of Registration and Education—A. F. G.—August 26, 1940.)

The board of plumbing examiners has power to approve the minutes of the board meetings concerning applications for examinations and revocations of licenses, without the approval of the mayor.

Citation: Mun. Code: 20-11.

EXEMPTION OF HOSPITAL FROM PAYMENT OF WATER RATES

(No. 10366—Commissioner of Public Works—G. J. T. & E. F.—November 12, 1940.)

The commissioner of public works, upon application, may exempt from payment of water rates property owned and used in the immediate carrying out of the purposes of any charitable, religious or educational institution, including a hospital, provided he is satisfied that the property is not used for gain or profit or rented, operated, conducted or maintained for the purpose of producing revenue. The supply of water must be controlled by meter and the installation and maintenance costs are to be borne by the institution. The exemption is limited to an amount of water fixed by the commissioner as reasonably sufficient.

Citation: Mun. Code: 185-47.

Opinion No. 10360 of October 29, 1940 to the commissioner of public works holds substantially the same as the above opinion.

LEGAL STATUS OF CORPORATION COUNSEL

(No. 10400—J. F. G.—January 10, 1941.)

The amendment of section 83 of the Local Improvement act, which provides for the appointment of an attorney by the board of local improvements, does not supersede or affect section 7 of article XII of the Cities and Villages act, which provides that the head of the law department of the city shall be the corporation counsel, since said article XII was passed by referendum pursuant to section 34 of the Illinois Constitution and may not be amended either expressly or by implication without a vote of the people of Chicago.

Citations:

Constitution:	Illinois, art. IV, sec. 34.
Statutes:	IRS '39, 24: 176, 789.
Ordinance:	Mun. Code: 6-1.
Cases:	People v. Faherty, 306 Ill. 119 (1922).
	People v. Gill, 358 Ill. 261 (1934).
	Ptacek v. Coleman, 364 Ill. 618 (1936).

OPINION OF FOREGOING SYNOPSIS

In your letter of December 30, 1940 you direct our attention to paragraph 176 of chapter 24 of Illinois Revised Statutes, 1939, which is section 7 of article XII of the Cities and Villages Act relating to the city of Chicago. This section provides that the head of the law department of the city shall be the corporation counsel and, under the decision of *The People* v. *Faherty,* 306 Ill. 119, this provision repealed by implication section 83 of the Local Improvement Act (Par. 789, Chap. 24, Ill. Rev. Stat.

1939). However, section 83 of the Local Improvement Act was reenacted since the adoption of article XII relating to the city of Chicago and was last amended by an Act approved July 6, 1937, whereas section 7 of article XII above referred to was last amended by an Act approved June 25, 1929 and adopted by the people of Chicago on June 5, 1933. The question is whether the provision in section 83 of the Local Improvement Act for the appointment of an attorney by the board of local improvements supersedes the provision in section 7 of article XII of the Cities and Villages Act that the head of the law department shall be the corporation counsel.

While the provision in section 83 of the Local Improvement Act above referred to applies only to cities of 500,000 inhabitants and over it is, nevertheless, in form and theoretically, a general law applicable to all such cities and villages, whereas section 7 of article XII was based upon section 34 of article IV of the Illinois Constitution affecting the municipal government of Chicago. No law passed pursuant to that section of the Constitution and adopted by the people of Chicago may be amended either expressly or by implication without a vote of the people of Chicago (*People* v. *Gill,* 358 Ill. 261; *Ptacek* v. *Coleman,* 364 Ill. 618). Hence, the reenactment and amendment of section 83 of the Local Improvement Act which, as we have pointed out, is a general law did not affect the law department of the city of Chicago.

You are advised, also, that pursuant to section 7 of article XII above referred to the law department of the city of Chicago was consolidated under the present corporation counsel and the Municipal Code of Chicago now provides (section 6-1) that the department of law shall embrace the corporation counsel and such assistants and clerks as may be provided for in the annual appropriation ordinance.

The board of local improvements in the city of Chicago does not appoint an attorney for the board but an assistant corporation counsel is appointed to perform such legal service as is necessary or required by the board.

LEGAL STATUS OF CHICAGO PLAN COMMISSION

(No. 10420—City Comptroller—J. F. G.—February 14, 1941.)

The Chicago plan commission is a department or subordinate agency of the city government.

Citations:
Statutes: IRS '39, 24: 71 to 73.
Cities and Villages act, art. VI, secs. 2, 4; art. VII, secs. 11, 17; art. VIII, sec. 1.
Ordinance: Mun. Code: 21-42, 21-43.

OPINION OF FOREGOING SYNOPSIS

Reference is made to your inquiry of February 4, 1941 "as to whether the Chicago Plan Commission is a department of the city which should operate under regulations applicable to departments of the city government or may the commission operate independently of such regulation."

The Chicago Plan Commission was established by an ordinance passed July 12, 1939 which was incorporated in the Municipal Code of Chicago. The powers and duties of the Chicago Plan Commission are fully set forth

in section 21-43 of said code. They clearly indicate that the commission may exercise only such powers as are granted to it by the city council. It may prepare and recommend to the city council a comprehensive plan for the development of existing property, the rehabilitation of depreciated areas and of public improvements looking to the present and future development of the municipality, such plan after its adoption by the city council to be known as the official plan of the city. It is the intention that the functions of the plan commission shall be advisory, investigatory and recommendatory only and that its functions shall in no way "derogate from the powers of the city council to pass upon and appropriate for all city projects and improvements." The commission is required to make an annual report to the mayor and city council of its accomplishments and recommendations.

The commission was created by authority of "An Act in relation to plan commissions in cities, villages and incorporated towns," approved June 24, 1921 (Ill. Rev. Stat. 1939, p. 396, pars. 71-73). The Act referred to provides that such commission shall consist of a chairman and such number of other members appointed in such manner and serving for such terms as such city, village or incorporated town may by ordinance prescribe except that certain officers of the city shall be members *ex-officio* of any such commission.

The members of the commission, other than the *ex-officio* members, were appointed by the mayor with the approval of the city council pursuant to section 21-42 of the Municipal Code of Chicago as is consistent with both the Act of 1921 in relation to plan commissions and section 2 of article VI of the Cities and Villages Act which authorizes the city council to provide for appointment by the mayor, with the approval of the city council, of such officers as may by said city council be deemed necessary or expedient.

The members of the commission, when appointed, executed official bonds with surety approved by the city council as officers of the city pursuant to section 4 of article VI of the Cities and Villages Act.

The Act in relation to plan commissions above referred to is only an enabling Act authorizing the city council to provide for its creation. It may be abolished by an ordinance passed by a vote of two-thirds of all the aldermen elected, to take effect at the end of the fiscal year, in the same manner as any other office created by the city council may be abolished pursuant to section 2 of article VI of the Cities and Villages Act and the city council may devolve the duties of the commission on any other city officer or officers.

The city council is required to appropriate money for the expenditures or charges to be made or incurred by the commission in the annual appropriation bill and may levy taxes therefor within the limits allowed for general corporate purposes pursuant to section 1 of article VIII of the Cities and Villages Act.

The city comptroller is required to exercise general supervision over receipt, collection and disbursement of funds by the commission, as provided in section 17 of article VII of the Cities and Villages Act and no money may be paid on account of any expenses of the commission except upon warrant drawn upon the treasurer, signed by the mayor and countersigned by the city comptroller, as provided in section 11 of article VII of the Cities and Villages Act.

From the foregoing it is clear that for the purposes above set forth the Chicago Plan Commission is a department or subordinate agency of the city government.

WITHHOLDING ATTORNEY'S FEES

(No. 10472—City Comptroller—F. V. M.—May 12, 1941.)

The city comptroller must withhold from the judgment monies the stipulated sum to satisfy the attorney's fee as provided in the notice of attorney's lien.

Citation:
Statute: IRS '39, 13: 14.
Other reference: 19 Op. Corp. Coun. (1936-37), p. 362 (No. 9408).

DEFENSE OF EMPLOYEES ON SUIT BY FORMER EMPLOYEES

(No. 10508—Commissioner of Police—C. H. L.—July 17, 1941.)

The corporation counsel would have authority to defend present employees of the police department in a suit by former employees claiming to be *de jure* officers for monies which they claim is due and owing to them from the group of defendants mentioned, provided the city council directs the corporation counsel so to do.

Citations:
Statute: IRS '39, 24: 176.
Ordinance: Mun. Code: 6-2.

FEES FOR CIVIL SERVICE EXAMINATIONS

(No. 10547—President, Civil Service Commission—F. V. M.—October 22, 1941.)

The city collector is the proper official to collect fees imposed by state law for taking city civil service examinations. Upon payment of the necessary fee by an applicant, the city collector may issue a stamp in lieu of a receipt as acknowledgment of such payment, which stamp could be attached to the application and cancelled by a time clock in his office.

Citations: S. B. 271, approved June 26, 1941.
IRS '41, 24½: 44.

TERM OF INCARCERATION UNDER SEVERAL MITTIMI

(No. 10554—Superintendent, House of Correction—F. V. M.—November 3, 1941.)

Whether or not mittimi issued after conviction for city ordinance violations are to run consecutively or concurrently would depend upon the phraseology of the mittimi issued by the court.

Citations:
Statute: IRS '41, 37: 382; 38: 762.
Cases: Kennedy v. People, 122 Ill. 649 (1887).
Kroer v. People, 78 Ill. 294 (1875).
People v. Elliott, 272 Ill. 592 (1916).
People v. Rettich, 332 Ill. 49 (1928).
People v. Graydon, 329 Ill. 398 (1928).

REMOVAL OF SIGN WHEN FEES DELINQUENT

(No. 10562—City Comptroller—P. J. L.—November 19, 1941.)

The sign division of the department of streets and electricity had power to remove a sign when the inspection and compensation fees therefor had been delinquent for three years. Upon payment of such delinquent fees plus the cost of removing the sign, the sign may be released to the owner.

Citations:
Ordinance: Mun. Code: 86-71, 86-72.
Case: Hanrahan v. Chicago, 289 Ill. 400 (1919).
Other reference: 18 Op. Corp. Coun., p. 371 (No. 7220).

INSPECTION OF SCALES AND REGULATION OF CATTLE WEIGHING AT UNION STOCK YARDS

(No. 10570—Inspector of Weights and Measures—M. H. F.—December 4, 1941.)

The Packers and Stockyards act of 1921 supersedes the authority of the city to inspect scales and regulate cattle weighing at the Union Stock Yards under city ordinance.

Citations:
Statutes: IRS '39, 24: art. V.
42 Stat. 159, USCA Title 7, Secs. 181-231 (Packers and Stockyards act, 1921).
Ordinance: Mun. Code: 16, 100, 164.
Cases: U. S. v. Union Stock Yard and Transit Co., 226 U. S. 286 (1912).
Stafford v. Wallace, 258 U. S. 495 (1921).
Morgan v. U. S., 8 F. Supp. 766 (1934).
Other reference: 35 Op. Att. Gen., p. 110 (1924).

OPINION OF FOREGOING SYNOPSIS

You have requested our opinion concerning the application of the city's weights and measures ordinance and the supervisory jurisdiction of the inspector of weights and measures in the matter of the inspection of scales and the weighing of cattle at the yards of the Union Stock Yard and Transit Company, Union Stock Yards, Chicago.

By article V of the Cities and Villages Act, chapter 24, Illinois Revised Statutes 1939, the city has been granted express power to provide

for the inspection and sealing of weights and measures, to enforce the keeping and use of proper weights and measures by vendors, and to regulate the inspection, weighing and measuring of any article of merchandise.

In pursuance of the authority given it the city council of the city enacted chapter 16 of the Municipal Code of Chicago in and by which the department of weights and measures was established and jurisdiction given to it over the inspection and examination of all weights and measures, scale beams, patent balances, steelyards, and other instruments used for weighing and measuring in the city. Chapter 100 of the code was also enacted, which chapter has to do with the regulation of weights and measures. In addition the licensing, bonding, and regulation of public weighmasters, and the issuance of weight certificates, was provided for by chapter 164, entitled "Public Weighmasters."

While by their terms these ordinances are broad enough to give authority over the above mentioned cattle weighing and the inspection of cattle weighing scales, our investigation reveals that the Packers and Stockyards Act, 1921, has a bearing upon the matter and projects the further inquiry whether this act has superseded the city's authority to regulate cattle weighing and inspect scales at the Chicago stockyards.

The Packers and Stockyards Act, 1921, was passed August 15, 1921. (42 Stat. 159, U. S. C. A. title 7, sections 181 to 231, inclusive.) It is an act to regulate interstate and foreign commerce in livestock, livestock products, dairy products, poultry, poultry products, and eggs, and for other purposes. By it the term "stockyard owner" is defined to mean any person engaged in the business of conducting or operating a stockyard, and the term "stockyards services" means services or facilities at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, *weighing,* or handling in commerce, of livestock. "Market agency" means any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyard services. "Stockyard" is defined to mean any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held or kept for sale or shipment in commerce. The Secretary of Agriculture administers the act. By his order the enforcement of its provisions has been put under the control of the chief of the bureau of animal industry. The act treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the west to the consumers in the east, and the courts in construing the act have held that in the receipt of livestock by rail, and in their delivery by rail, the stockyards are an interstate commerce agency. *United States* v. *Union Stock Yard and Transit Company,* 226 U. S. 286; *Stafford* v. *Wallace,* 258 U. S. 495. In the last mentioned case, the court said (p. 515):

> "The stockyards are not a place of rest or final destination. Thousands of head of live stock arrive daily by carloads and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the West to the East, and from one state to another. Such transactions cannot be separated from the movement to which they contribute, and necessarily take on its character. The commission men are essential in making the sales without which the flow

of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not, in this aspect, merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but on the contrary, being indispensable to, its continuity. The origin of the live stock is in the West; its ultimate destination, known to, and intended by, all engaged in the business, is in the Middle West and East, either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce."

By its decision in the case of *Stafford* v. *Wallace, supra,* the Supreme Court of the United States upheld the constitutionality of the act.

The act makes it the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard. It provides, however, that in any state where the weighing of livestock at a stockyard is conducted by a duly authorized department or agency of the state, the secretary of agriculture, upon application of such department or agency, may register it as a market agency for the weighing of livestock received in such stockyard, and upon such registration such department or agency and the members thereof shall be amenable to all the requirements of the act, and upon failure to comply with the orders of the secretary he is authorized to revoke the registration of such department or agency. (U. S. C. A. title 7, section 205.) Rates and charges made for any stockyard services are required to be just, reasonable, and nondiscriminatory. (U. S. C. A. title 7, section 206.) Since the business of livestock selling and buying or market agencies is affected with the public interest and directly affects interstate commerce, their rates and charges for stockyards services are subject of governmental regulation and congressional legislation. (*Morgan* v. *U. S.* (1934), 8 F. Supp. 766.) The secretary of agriculture is given power to prescribe rates and practices to prevent discrimination between intrastate and interstate commerce, and to issue cease and desist orders to prevent unfair, discriminatory or deceptive practices. (U. S. C. A. title 7, sections 212, 213.) Under such practices the practice of weighing is specifically mentioned.

In pursuance of the authority vested in him by the act the secretary of agriculture has issued certain rules and regulations concerning stockyards and the practices therein, one of which, especially pertinent here, is as follows:

> "Every stockyard owner or market agency that furnishes weighing facilities at stockyards shall maintain and operate such facilities so as to insure accurate rates."

The stockyard of the Union Stock Yard and Transit Company, being a stockyard subject to regulation under the Act, and its weighing of cattle being a stockyards service controlled by the bureau of animal industry of the department of agriculture, our opinion is that the Packers and Stockyards Act, 1921, supersedes the authority of the city to inspect scales and regulate cattle weighing at the yard under the city ordinances.

This conclusion is fortified by the opinion of the Attorney General of the United States, which expresses the view that the provisions of the Packers and Stockyards Act, 1921, are supreme and paramount within their sphere, and as a consequence the laws of a state (Minnesota 1919, chapter 461) providing for the weighing of livestock at public stockyards,

within the police power of the state, conflicted with the act and were superseded thereby. 35 Op. Atty. Gen. 110. In the opinion, dated December 22, 1924, the attorney general (Mr. Harlan F. Stone, now Chief Justice of the Supreme Court of the United States) advised the secretary of agriculture to enforce the provisions of the Packers and Stockyards Act, 1921, with respect to the weighing at the stockyards under his jurisdiction, including those stockyards at South St. Paul, and to require the stockyards company to furnish this "stockyards service." The opinion reviews the court decisions relative to the Packers and Stockyards Act, which decisions hold that the great stockyards of the country are utilities in the flow of livestock from one state to another in interstate commerce, and it points out that the weighing of livestock at these stockyards is a necessary part of such commerce, a necessary flow of this current of commerce. It also cites authorities of the Supreme Court of the United States holding that the authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on. Observing that the act defines the weighing of livestock as a "stockyard service" and imposes the duty upon every stockyard owner and market agency to furnish, upon reasonable request, without discrimination, reasonable stockyard service at such stockyard, it expresses the view that this is diametrically opposed to the state law, which provides that the state shall furnish such weighing service, and therefore, if there is a conflict between the state law and the federal statute, the federal law is supreme and the state law must fall. Furthermore, it disposes of the suggestion that state officials continue to do the weighing and be supervised by the secretary of agriculture under the Packers and Stockyards Act, 1921, by stating that such a plan would be in direct violation of section 304 of the act, which requires the stockyards company to furnish such facilities, and also, that there is no legal process or power by which the secretary of agriculture could enforce the supervision upon state officers, and further that any delegation of such authority to state officers of duties imposed by the act upon the secretary of agriculture would be an illegal delegation, as Congress has said that the secretary of agriculture or his duly appointed, qualified, and acting assistants must perform these duties.

DEFENSE OF LAW SUIT AGAINST FORMER CITY TREASURER

(No. 10578—Alderman, 12th Ward—J. F. G.—December 23, 1941.)

The city is not liable for the cost of legal services in the case of *Peo.* v. *U. S. F. & G. Co., et al.* or to defend a law suit against the former city treasurer for alleged misappropriation of tax monies to the injury of holders of unpaid tax anticipation warrants.

Citation: Leviton v. Board of Education, 374 Ill. 594 (1940).

OPINION OF FOREGOING SYNOPSIS

The statement of account rendered by Brewer & Farrell, attorneys to James A. Kearns, for legal services in the case of *The People of the State of Illinois, for the use and benefit, etc., et al.* v. *United States Fidelity and Guaranty Company, et al.,* has been submitted to us with request that we advise you as to the liability of the city to pay for the services rendered in this case or to defend the law suit.

In *Leviton* v. *Board of Education,* 374 Ill. 594 (1940), our Supreme Court held void an issue of bonds to fund judgments based on unpaid

board of education warrants issued in anticipation of the collection of taxes for the year 1929. In the original suits in which the judgments had been rendered it was contended that the board of education violated its trust in not pro rating the 1929 taxes collected to the holders of the warrants proportionately. But the court held that the basis of liability for these judgments was either the tax anticipation warrants or the breach of duty by an officer of the board of education, neither of which could create a general liability against the board under the constitution.

The city of Chicago was a party to the original suits in which judgments had been rendered against the board of education. We appeared for and defended the city in these suits and secured the dismissal of the city for want of liability.

In the instant case an attempt is made to recover from the surety companies and the principals on the bonds, one of whom is James A. Kearns, former treasurer of the city of Chicago, for the alleged misappropriation of the tax monies to the injury of the holders of unpaid warrants.

The corporation counsel may defend an officer in a suit involving his official duties but the Supreme Court has held that the board of education, for whom Mr. Kearns acted as treasurer ex-officio, was not responsible for the misconduct, if any, of its officers in the payment of these warrants. Certainly, under such circumstances, the city of Chicago cannot be held responsible either for the losses to the holders of the tax anticipation warrants or for the defense of a suit to enforce the personal responsibility of one who, it is claimed, violated his duty as an officer of the city of Chicago and of the board of education. If we should assume the defense of Mr. Kearns in this suit it might be contended that the city thereby has recognized its responsibility for the acts of Mr. Kearns, and by the same token the city should be held liable for the payment of any judgment rendered against Mr. Kearns in this suit.

DESTRUCTION OF MUNICIPAL COURT FILES

(No. 10586—Chief Justice, Municipal Court—F. V. M.—January 22, 1942.)

The Municipal Court is without authority to enter an order giving the clerk of the court permission to destroy files twenty years old.

Citation: IRS '41, 25: 13; 37: 356, 369.

DESTRUCTION OF OLD RECORDS AND REPORTS

(No. 10599—Commissioner of Public Works—M. H. F.—February 11, 1942.)

Authority to destroy old records, reports and documents is not specifically granted by ordinance or statute. They may be treated as city property no longer usable and so disposed of.

Citation: Mun. Code: 7-3.

CANCELLATION OF INDEMNITY BONDS

(No. 10612—Commissioner of Buildings—M. H. F.—March 2, 1942.)

Indemnity bonds are not cancelled or surrendered by the city.

REMOVAL OF DANGEROUS TREES FROM PRIVATE PROPERTY

(No. 10623—Commissioner of Public Works—M. A. G.—March 23, 1942.)

The city can compel the removal of dangerous trees from private property.

Citations:
Ordinance: Mun. Code: 32-5, 32-18.
Other reference: 18 Op. Corp. Coun., p. 941 (No. 8188).

COSTS OF APPEAL IN CASE AGAINST A POLICE OFFICER

(No. 10624—Commissioner of Police—F. V. M.—March 23, 1942.)

The corporation counsel has no duty or authority to assume the costs of appeal in cases of police officers sued for damages resulting from acts committed while in the performance of official duties. His authority extends only to appearing for and defending such officers.

Citations:
Statute: IRS '41, 24: 176.
Ordinance: Mun. Code: 6-2.
Cases: City of Chicago v. Williams, 182 Ill. 135 (1899).
Gormly v. Mt. Vernon, 134 Iowa 394 (1906).
Donahue v. Keeshan, 91 App. Div. 602 (1904).
Corsicana v. Babb, 266 S. W. 196 (Tex. Civ. App., 1924).

OPINION OF FOREGOING SYNOPSIS

We are in receipt of your letter of March 9, 1942 with attached letter from Mr. John L. O'Malley, president of the Chicago Patrolmen's Club.

Mr. O'Malley calls attention to the fact that in the past in cases of police officers who have been sued for damages resulting from acts committed by them while in the performance of their official duties as police officers, and in which appeals have been taken, the costs thereof have been borne by the Chicago Patrolmen's Club. Reference is made to case No. 2861547, Municipal Court, in which judgment for $1,180.00 containing a malice count was entered against James McNeil, police officer, and case No. 2863757, Municipal Court, in which judgment for $300.00 containing a malice count was entered against Edward Woodrich, police officer. Mr. O'Malley suggests that these cases be appealed and that the costs thereof be paid by this department.

We quote from the Illinois Revised Statutes, 1941, chapter 24:

"176. Corporation counsel to be head of law department.) Sec. 7. The head of the law department of the city shall be the corporation

counsel, and the duties heretofore performed by the city attorney shall be performed by the corporation counsel and his assistants. From and after the adoption of this act the office of city attorney shall be abolished.

"The corporation counsel shall be and act as the legal adviser of the city council and of the several officers, boards and departments of the city. He shall appear for and protect the rights and interests of the city in all actions, suits and proceedings brought by or against it or any city officer, board or department, including actions for damages when brought against such officer in his official capacity; provided, however, that when an officer or employee of the city is sued, personally, even if the cause of action arose out of his official duties, the corporation counsel shall appear for such officer or employee only in case the city council directs him to do so. (As amended by act approved June 25, 1929, L. 1929, p. 208. Adopted June 5, 1933.)"

We also quote from the Municipal Code of Chicago, chapter 6:

"6-2. There is hereby created the office of corporation counsel. He shall be appointed by the mayor, by and with the advice and consent of the city council, and shall be the head of the department of law of the city.

"The corporation counsel shall perform the following duties: * * *

"(c) Appear for and defend any member, officer or employe of the board of health, police department or fire department who is sued personally for damages claimed in consequence of any act or omission or neglect of his official duties or in consequence of any act under color of authority or in consequence of any alleged negligence while engaged in the performance of such duties." * * *

Insofar as the participation of this office in a trial in which a police officer is involved is contemplated, the foregoing sections of the statutes and the code are the sole authority therefor.

Now comes the question of the authority of the Corporation Counsel to assume the costs of appeal in such cases.

In the case of the *City of Chicago* v. *Williams,* 182 Ill. 135 (1899) in which the city was sued by a court reporter for services rendered in a cause entitled *Quinlan* v. *Badenoch* then chief of police of the city of Chicago and the plaintiff therein having been employed in behalf of the city through the office of the corporation counsel of Chicago.

The court said on pages 139 and 140:

"It follows from what has been said, that the City of Chicago was not in any way liable in the suit brought by Ella C. Quinlan against Badenoch and Fitzpatrick. As the city was not liable, and was not a party to the suit, it was not the duty of the corporation counsel, or of any of his assistants, to defend that suit at the expense of the city.

"*Second*—Any contract, made by an assistant corporation counsel with a stenographer, authorizing the latter to perform services for the city in a suit to which the city is not a party, and in which the city can, under no circumstances, be held liable, is an invalid contract, and cannot be enforced. This must necessarily be so upon principle and upon authority.

"The city of Chicago would have no power to make an appropriation of the public funds to pay the expenses of defending such a suit, as that which was brought by Quinlan against Badenoch and Fitzpatrick. The second paragraph of section 1 of article 5 of the

City and Village act, which is the charter of the city of Chicago, gives to the city power 'to appropriate money for corporate purposes only, and provide for payment of debts and expenses of the corporation.' To appropriate money for the defense of a suit for damages, brought against a police officer because of an illegal arrest made by him, is not to appropriate money for a corporate purpose. Such an appropriation of money would not be providing for the payment of the debts and expenses of the corporation. And if money could not be appropriated by an ordinance for the payment of the expenses of defending such a suit, a contract could not be made with a stenographer, or other person, by any officer of the city making the city liable to pay money therefor." * * *

While it is true that the section quoted from the Illinois Revised Statutes 1941 and from the Municipal Code of Chicago had not been adopted at the time of the decision in *City of Chicago* v. *Williams, supra,* we believe these sections do no more than authorize the corporation counsel to participate in the trials of such cases as an attorney and do not authorize the assumption of the costs thereof. Some of the costs of an appeal are taxable against the losing party and are part of the judgment. Certainly it will not be contended that the city should assume the obligation of a judgment or any part thereof in a case such as this. No distinction can be made between costs advanced by appellant and costs of appellee taxed against appellant in the judgment.

In the case of *Gormly* v. *Mt. Vernon* (1906), 134 Iowa 394, the court said:

* * * " 'It is certain on reason and authority that for the unlawful act of plaintiff in causing or being concerned in false arrest and imprisonment of (the person arrested) the town would not be liable to the latter in damages . . . And it would be utterly beyond all bounds to say that in the case of an officer of a town who errs as to his duty and commits an act not only unauthorized but unlawful, whereby another suffers injury and damage, a legal obligation arises on the part of the town to reimburse such officer for costs, expenses, and damage imposed upon him, in consequence of his wrong so done.' "

In *Donahue* v. *Keeshan* (1904), 91 App. Div. 602, 87 N. Y. S. 144, it was held:

"That it was no part of the duty of the corporation council of the City of New York to defend a policeman in a civil action for assault, the court saying that the duty of a policeman under proper circumstances to make an arrest carried with it the right to use so much of force, and no more, as was reasonably necessary to accomplish the purpose, and that when the officer went beyond that point, he ceased to act in behalf of the city and assumed the responsibility himself."

In *Corsicana* v. *Babb* (1924; Tex. Civ. App.), 266 S. W. 196, the court said:

* * * "The greatest restraining influence holding the average peace officer in check in the exercise of the authority of his office is the fact that he, as such officer, is amenable to the law for abuse of the powers conferred, and that, on being haled before the courts to answer for his stewardship, the expense incurred on his part must be borne by himself, and to sustain appellant's contention would be but to destroy this safeguard, creating a condition short of despotism."

We are therefore of the opinion that the corporation counsel cannot legally authorize the expenditure of funds of the city of Chicago for appeal costs in the cases hereinabove referred to by Mr. O'Malley.

RECOVERY OF COURT COSTS PAID BY MISTAKE

(No. 10626—Committee on Finance—C. N.—April 2, 1942.)

Costs paid voluntarily to the clerk of the municipal court cannot be recovered because of a mistake of law or fact.

Citation: 9 Op. Corp. Coun., p. 912 (1916).

TERM OF OFFICE OF MEMBER OF MEDICAL CENTER COMMISSION

(No. 10642—Medical Center Commission—F. V. M.—May 26, 1942.)

When the law does not fix any time for the commencement of a term of office to be filled by appointment, the term runs from the date of appointment.

Citations:
Statute: IRS '41, 91: 126 (Medical Center District act).
Case: People v. Reinberg, 263 Ill. 536 (1914).

TRANSFER OF AUTHORITY FROM ONE DEPARTMENT TO ANOTHER

(No. 10717—Committee on Housing—A. F. G.—December 2, 1942.)

The city council, under the statute, has power to create new offices and vest in them powers and duties theretofore vested in other city officers where such powers and duties were not prescribed by statute: i. e. the creation of a Housing Board of Inspection and a Housing Board of Appeals to be vested with powers previously exercised by the Board of Health and the Commissioner of Buildings.

Citations:
Statute: IRS '41, 24: 9-14 and 9-16; 24: 23-61, 23-81, 23-82.

CHAPTER II

RIGHTS AND DUTIES OF CITY EMPLOYEES

A. CIVIL SERVICE

STATUS OF CITY EMPLOYEES WHILE IN SERVICE WITH ARMED FORCES OF THE UNITED STATES

(No. 10373—Commissioner of Relief—M. H. F.—November 25, 1940.)

At present, there is no authority under which employees of the Chicago Relief Administration or any other city employees can be paid their salaries or any part thereof during service with the armed forces of the United States.

The city council may pass a resolution expressing the "sense" of the council that employees of the Relief Administration who enter the land or naval forces of the United States for training and service should be restored to their positions, or to positions of like seniority, status and pay, after completing their period of service, if such positions are then available and such employees are qualified to perform the duties of such positions. However, the council now has no power to bind itself to make appropriations to restore such employees to their former positions with like pay.

The Chicago Relief Administration is not a deliberative body which may pass resolutions, but is a department of the city government directed by the commissioner of relief and subject to the control of the city council.

Citations:
Statute: Selective Training and Service act of 1940; US Code Cumulative Index, No. 8, p. 879 (1940).
Ordinance: Coun. J. (Nov. 6, 1940), p. 3411.
Cases: Drake v. Phillips, 40 Ill. 388 (1866).
Briscoe v. Allison, 43 Ill. 290 (1867).
County of Grundy v. Hughes, 8 Ill. App. 34 (1880).
Other reference: 19 Op. Corp. Coun. 198 (No. 9518).

ACTIVE DUTY FOR FORMER DISABLED POLICEMEN

(No. 10302—Commissioner of Police—G. F. M.—July 1, 1940.)

It is the duty of the commissioner of police to return to active duty any member of the police department who has received ordinary disability benefits, immediately upon receipt of notice from the retire-

ment board of the policemens' annuity and benefit fund that said board has found that the disability of such policeman has ceased.

Citation: IRS '39, 24: 990, 1006.

CIVIL SERVICE STATUS OF SELECTIVE SERVICE REGISTRANT

(No. 10450—F. V. M.—April 1, 1941.)

During the period that the name of a selective service registrant remains on the civil service eligible list, a registrant would retain his right of appointment if he files a waiver when certified for an appointment during his period of army service and said waiver is approved in accordance with the rules of the civil service commission.

In the event that the registrant's name is stricken from the eligible register after it has remained thereon more than two years, the registrant would lose his civil service standing and would not be entitled to appointment thereafter.

Citations:
Statute: IRS '39, 24½: 48.
Other references: House Bill No. 129 (1941).
Civil Service Commission, Rule IV, sec. 4.
Resolution by City Council, Coun. J. (1940-41), p. 3411.

OPINION OF FOREGOING SYNOPSIS

We are in receipt of your letter of March 12, 1941 addressed to Mayor Edward J. Kelly and forwarded to this department for reply, in which you ask for an official opinion on the following question:

> "If a selective service registrant is on the city of Chicago civil service eligible list (policemen, firemen, etc.) and he is called for civil service duty at any time during the period of his one year army service, will this registrant, when he has completed his military duty, be given the civil service position he would have filled had he not been called for military duty?"

In reply thereto we quote in part from a resolution passed by the city council on November 6, 1940:

> "Whereas, There is now in force and effect an Act of Congress known as the Selective Training and Service Act of 1940 which authorizes the President to select and induct into the land and naval forces of the United States any qualified male person for training and service in the national interest, for common defense and national security; and
>
> "Whereas, Employes of the City are subject to compulsory military training and service by virtue of said Act of Congress; and
>
> * * * * * *
>
> *"Be it Resolved,* The head of every department of the City government be and he hereby is directed not to fill, by certification from any eligible register maintained pursuant to 'An Act to regulate civil service in cities,' any vacancy caused by leave of absence of any

employe for training and service in the land or naval forces of the United States.

"Be it Further Resolved, The head of every department of the City government be and he hereby is directed to save from the annual appropriations for salaries for his department an amount equal to the deductions from the salaries of employes for annuity funds so that every employe on leave of absence for training and service in the land or naval forces of the United States may secure the benefit of accumulating to his credit in his annuity fund an amount which he would accumulate by continuous service in the City and payment of his salary during his period of training and service in the land or naval forces of the United States.

"Be it Further Resolved, That the Corporation Counsel be and he hereby is directed to prepare such bills as may be necessary for passage by the General Assembly of the State of Illinois to effectuate the purposes of these resolutions."

We have been furnished with a copy of House Bill No. 129 which has just been enacted into law, reading in part as follows:

"Section 1. Whenever the corporate authorities of any municipal corporation, as defined in this Act, by ordinance, resolution, rule or order heretofore passed or which may hereafter be passed, shall provide for the preservation of civil service and pension rights, either or both, of employes of such municipal corporation who, after September 16, 1940, enlist or have been or may be ordered to active Federal service or inducted into the land or naval forces of the United States pursuant to the Selective Training and Service Act of 1940, the Army Reserve and Retired Personnel Service Law of 1940 or other Acts of Congress, it shall be the duty of all officers affected or concerned to do all things necessary to be done and to perform all acts required to carry out and effectuate the purpose and intent of such ordinance, resolution, rule or order.

"Sec. 2. Any employe holding a position by virtue of any Act governing the civil service of such municipal corporation who enlists or has been or may be ordered to active Federal service or inducted into the land or naval forces of the United States as provided in Section 1 of this Act may be considered as being on furlough or leave of absence during his period of training and service and for forty days after he is relieved from such training and service as provided in the Selective Training and Service Act of 1940, the Army Reserve and Retired Personnel Service Law of 1940, or other Acts of Congress, and, unless incapacitated from the performance of the duties thereof, may be restored to such position without loss of seniority or to such other position as his civil service status would have entitled him had he been continuously in the active service of such municipal corporation during the period of such furlough or leave of absence."

Neither the foregoing resolution of the city council nor the act of the legislature gives consideration to the status of one entering the military or naval service whose name appears on a civil service eligible register.

Section 10 of the Civil Service Act (Ill. Rev. Stat. 1939, p. 762) reads in part as follows:

"The head of the department or office in which a position classified under this act is to be filled shall notify said commission of that fact, and said commission shall certify to the appointing officer the name and address of the candidate standing highest upon the register for

the class or grade to which said position belongs, * * *. Said commission may strike off names of candidates from the register after they have remained thereon more than two years. * * *"

We also quote section 4 of rule IV of the civil service commission:

"Waiver. A person certified or tendered reinstatement must report to the head of the department or appointing officer within five days from the date of certification and in case of failure to report, his name shall be removed from the eligible register. The Commission may permit an eligible to waive certification or reinstatement within five days. If waiver is approved, the name of such eligible shall not be certified until the waiver has been withdrawn. When certification is to a position which is temporary and waiver filed the person so certified shall be re-certified for permanent employment without withdrawal of such waiver and same shall thereby be cancelled. Waivers whether continuous or otherwise, shall not be permitted for a period longer than one year, provided, however, that where an eligible enters the military or naval service of the United States or is holding an existing position in the classified service and for that reason waives certification, such waiver may stand during the life of such register, unless sooner withdrawn."

It is therefore our opinion that during the period that the name of a selective service registrant remains on the civil service eligible register (not less than two years), a registrant would retain his right of appointment if when certified for appointment he files a waiver and said waiver is approved in accordance with the foregoing rule of the civil service commission.

In the event that the registrant's name is stricken from the eligible register after it has remained thereon more than two years, the registrant would lose his civil service standing and would not be entitled to appointment thereafter.

Opinion No. 10455 of April 9, 1941 to the alderman of the 32d ward holds the same as the above opinion.

WITHDRAWAL OF POLICEMAN'S RESIGNATION

(No. 10453—F. V. M.—April 9, 1941.)

A policeman whose resignation has been offered and accepted, cannot be allowed to withdraw his resignation and be reinstated to his former position at any time after thirty days from the filing of said resignation with the civil service commission.

Citation: Civil Service Commission, Rule IX, sec. 2.

CIVIL SERVICE DISTINCTION BETWEEN FIELD NURSES

(No. 10477—President, Civil Service Commission—F. V. M.—May 16, 1941.)

Since the duties of field nurse (M. T. S.) pertain exclusively to the care and treatment of tuberculosis patients, while the duties of field nurse (health) generally have to do with the care of babies and

inspection of children for contagious diseases, their duties are so distinct as to warrant the civil service commission in holding separate examinations for these positions and posting separate eligible lists based upon the results of these examinations. Further, temporary positions of field nurses (M. T. S.) should not be filled from the eligible list of field nurses (health).

Citations:
Statute: Civil Service act, secs. 3-4.
Other references: 18 Op. Corp. Coun. (1929-35), p. 190 (No. 6621).
Civil Service Commission Rules, Rule 1, secs. 3, 4, 5.

SECOND CHARGES AGAINST PATROLMAN

(No. 10507—Commissioner of Police—C. H. L.—July 17, 1941.)

Charges may be preferred against a discharged patrolman who was reinstated by court order because the civil service commission was without jurisdiction to order the discharge, provided the charges specifically state the facts alleged to constitute the cause for discharge.

Citations:
Case: People v. City of Chicago, 240 Ill. App. 208 (1926).
Other reference: Civil Service Commission, Rule VI, sec. 1.

RESOLUTION SAFEGUARDING RIGHTS OF CITY EMPLOYEE INDUCTEES

(No. 10538—Committee on Finance—A. F. G.—October 3, 1941.)

The city council resolution passed in 1940 fully provides for the preservation of the civil service status and the protection of pension rights of city employees inducted into military service. Enabling state legislation passed subsequent to this resolution was retroactive in nature; reenactment is therefore unnecessary.

Citations:
Statute: H. B. 129, passed in 1941.
Ordinance: Coun. J. (1940-41), p. 3411 (Resolution).

Opinion No. 10566 of November 27, 1941, to Alderman, 44th Ward, by F. V. M. holds substantially the same as the above opinion.

REINSTATEMENT FOLLOWING DISCHARGE

(No. 10585—Chicago Civil Liberties Committee—F. V. M.—January 20, 1942.)

Findings of the civil service commission may legally be reviewed only by a court of competent jurisdiction.

No city official has authority to direct the reinstatement of a civil service employee discharged by the commission.

Citation: Civil Service Commission, Rule VI, sec. 5.

RESIGNATION BY TELEGRAM

(No. 10596—Commissioner of Police—F. V. M.—February 5, 1942.)

Resignation by telegram is not in acordance with the rules of the police department.

Citation: Police Department Rules, No. 442.

LEAVES OF ABSENCE OF EMPLOYEES OF CHICAGO RELIEF ADMINISTRATION

(No. 10625—Commissioner of Relief, Chicago Relief Administration—F. V. M.—March 26, 1942.)

Employees of the Chicago Relief Administration are temporary employees and are not subject to the rules of the civil service commission pertaining to leaves of absence.

Citation: State of Illinois ex rel. Louis De Boer et al. v. Joseph P. Geary et al., 41C5356.

EFFECT OF LAYOFF OR OF DELAY IN REASSIGNMENT

(No. 10650—Retirement Board, Laborers' and Retirement Board Employees' Annuity and Benefit Fund—G. F. M.—June 16, 1942.)

Membership in the annuity and benefit fund depends solely on an employee's civil service status.

A layoff is not a discharge or separation from the service.

Delay in reassignment by the civil service commission cannot affect, cancel or destroy civil service status.

Citation: People ex rel. Kornfeind v. Park Employees' Annuity and Benefit Fund, 314 Ill. App. 101 (1942).

EFFECT OF FALSE AVERMENT AS TO CITIZENSHIP

(No. 10679—Commissioner of Police—F. V. M.—August 25, 1942.)

A false statement concerning one's citizenship constitutes grounds for excluding an applicant from any civil service examination or for removal from an eligible register or for dismissal from the service after certification.

Citations:
Statute: IRS '41, 24½: 6, Sec. 44.
Other references: 18 Op. Corp. Coun., p. 205 (No. 6991).
Civil Service Comm., Rule II, Sec. 6.

SICK LEAVE

(No. 10688—Public Vehicle License Commissioner—F. V. M.—September 24, 1942.)

"Sick leave" for city employees is regulated by action of the city council and rules of the civil service commission.

Citations:
Ordinance: Coun. J. 1-5-42, p. 6171.
Other reference: Civ. Serv. Comm. Rule VIII, Sec. 3.

LEAVE OF ABSENCE FOR DEFENSE WORK

(No. 10690—Alderman, 41st Ward—F. V. M.—September 30, 1942.)

Leaves of absence are governed by the rules of the civil service commission regardless of the reason for such leave.

Citation: Civil Service Comm. Rule VIII, Sec. 3.

WITHDRAWAL OF RESIGNATION

(No. 10716—F. V. M.—December 2, 1942.)

The civil service commission alone has power to decide on the action to be taken on an application to withdraw a resignation. Rules and regulations of the civil service commission have the same force and effect as the statute.

Citations:
Statute: IRS '41, 24½: 42.
Cases: City of Chicago v. Bullis, 124 Ill. App. 7 (1905).
Atty. General v. Trehy, 59 N. E. 659 (1901).
Skold v. Chief of Fire Dept., 165 N. E. 681 (1929).
Peo. ex rel. Scully v. City of Chicago, 41S-14236 (1942).
Other reference: Rules and Regulations of the Civil Service Comm., Sec. 2.

ALIENS AS TEMPORARY APPOINTEES

(No. 10724—Board of Health—C. P. H.—December 15, 1942.)

The board of health may appoint persons who are not citizens of the United States as internes and residents at the Contagious Disease Hospital for periods not exceeding sixty days.

The provisions of the Civil Service Law that all applicants for positions in the classified service of the city shall be U. S. citizens do not require that persons serving under temporary appointment be citizens of the United States.

Citations:
Statute: IRS '41, 24½: 44, 48, 50; 91: 1 to 16X.

B. SALARIES

POWER OF ATTORNEY TO RECEIVE SALARY CHECKS

(No. 10320—Chicago Fireman's Association Credit Union—E. R. D.—July 29, 1940.)

The city cannot accept and approve a power of attorney of a fireman authorizing a credit union to receive and endorse his pay check as this procedure is against public policy.

Citations:
Cases: Merwin v. City of Chicago, 45 Ill. 133 (1867).
City of Chicago v. People, 98 Ill. App. 517 (1901).

SALARIES DURING UNLAWFUL RETIREMENT

(No. 10324—City Comptroller—J. F. G.—August 5, 1940.)

The city comptroller may, with the consent of the retirement board, pay to firemen their net salaries for the period of their unlawful retirement, after deducting the sums paid to them as annuities and other sums lawfully deductable from their salaries for said fund.

Citations:
Statute: IRS '39, 24: 944.10, 944.13, 944.16, 944.17, 944.21, 944.22.
Case: Malloy v. City of Chicago, 365 Ill. 604 (1937).

REVOCATION OF POWER OF ATTORNEY

(No. 10436—City Comptroller—F. V. M.—March 11, 1941.)

A power of attorney to collect an employee's salary may be revoked, notwithstanding terms of irrevocability in the power of attorney, unless the power was supported by consideration, or is part of a security or is coupled with an interest.

Citations:
Cases: Walker v. Denison, 86 Ill. 142 (1877).
Thieme v. Westerberg, 221 Ill. App. 34 (1921).
Other reference: 21 Ruling Case Law 886.

OVERTIME PAYMENT FOR SUBWAY EMPLOYEES

(No. 10437—Commissioner of Subways and Superhighways—F. V. M. —March 17, 1941.)

The only employees of the department of subways and superhighways who are entitled to compensation for overtime previously worked are those who have performed manual labor, as specified in the order of the city council.

Citations:
Ordinance: Mun. Code: 25-9.
Other references: Coun. J. (Jan. 8, 1941), pp. 3761, 3769.
Op. Corp. Coun. (1897-1905), pp. 175, 768.
20 Op. Corp. Coun. (1938-39), p. 45 (No. 9910).

HONORING OF SALARY ASSIGNMENTS

(No. 10483—City Comptroller—J. F. G.—May 20, 1941.)

Back salary checks should be paid to former employees directly in spite of assignments and judgment claims given by such employees to third parties.

Citations: Merwin v. City of Chicago, 45 Ill. 133 (1867).
City of Chicago v. People, 98 Ill. App. 517 (1901).
Lamb v. Lamb, 256 Ill. App. 226 (1930).

VACATION PAY FOR FORMER CITY EMPLOYEES

(No. 10486—Commissioner of Subways and Superhighways—J. F. G. —May 24, 1941.)

In the case of death, voluntary resignation or discharge for cause, city employees should not be granted compensation on the basis of vacation pay for vacations to which they were entitled but which they did not take during the year in which the death, voluntary resignation or discharge for cause occurred. Those employees who leave the city's employ because of military service or who are dropped because of lack of work are entitled to vacation compensation for the year in which they left the service if they were engaged therein at least one year previous to the date of their separation from the service.

Citations:
Ordinances: Coun. J. (1939-40), p. 3411.
Coun. J. (1940-41), p. 4591.
Other references: 18 Op. Corp. Coun. (1929-35), p. 156 (No. 8826).
20 Op. Corp. Coun. (1938-39), p. 45 (No. 9910).

OPINION OF FOREGOING SYNOPSIS

Reference is made to your letter of May 13, 1941 directing our attention to an order passed by the city council on April 23, 1941 (Coun. J., p. 4591) authorizing the commissioner of subways and superhighways to pay to the widow of John A. Shannon compensation on account of loss of two weeks' vacation due him during the year 1940. You have asked us to review this order and advise if you can legally voucher this payment in view of our opinion No. 8826 (18 Op. Corp. Coun., p. 156).

In our opinion of July 24, 1935 we held that death terminates the incumbency of an office and the payment of salary for any period after the death of an officer is an unlawful diversion of public funds and, therefore, the widow of a deceased city officer cannot be paid salary for a vacation earned but not taken by the officer at the time of his death.

Since that opinion was rendered we have held that notwithstanding their separation from the service city employes by reason of their previous regular employment for a required length of time were entitled to two weeks' vacation with pay. (20 Op. Corp. Coun., p. 45 (No. 9910).) This opinion involved former employes of the board of health who were laid off on account of lack of work. We do not regard this later opinion as a reversal of the former opinion. The two may be reconciled for the reason that in the later case the action of the head of the department deprived the employes of their right to vacation with pay when they were laid off.

On March 17, 1941 we had occasion to advise you that employes of your department leaving to join the military forces of the United States or resigning to take other positions in private industry or dropped from service because of lack of work or unsatisfactory performance were entitled to compensation for the two-weeks' vacation period for the year in which they left the service if they were engaged therein at least one year previous to the date of their separation from the service.

We now believe that the latest opinion referred to was too broad and that it should have been confined to employes who left your department for military service and those who were dropped because of lack of work. The reason for including those employes who left your department on account of military service is the resolution of the city council passed November 6, 1940 (Coun. J., p. 3411) authorizing leave of absence to enable employes to enter the army or navy and directing the head of every department not to fill any vacancy caused by such leave of absence.

In the case of death, voluntary resignation or discharge for cause the office or position become vacant and it may be necessary to fill the place immediately. That would preclude expenditure of the appropriation for that position for extra compensation on account of loss of vacation of the prior incumbent. This is not said to indicate that vacation pay may be allowed in a case when the vacancy is not filled immediately but rather to prove the soundness of the rule that it is an unlawful diversion of public funds to allow such claims in case of death, voluntary resignation or discharge for cause.

Under these circumstances, you cannot legally voucher the payment authorized by order of the city council.

EFFECT OF PREVAILING WAGE STATUTE ON CITY WAGES

(No. 10533—Committee on Finance—A. F. G.—September 18, 1941.)

The city council committee on finance may disregard the 1941 act concerning the prevailing rate of wages on public works when it fixes the wage and salary rates for city employees, as this act applies to employees of contractors under contracts for public works.

Citation: "An Act regulating wages of laborers, mechanics and other workmen employed under contracts for public works," passed September 18, 1941.

EMPLOYING REGULAR EMPLOYEES FOR EMERGENCY WORK

(No. 10548—City Comptroller—J. F. G.—October 24, 1941.)

If emergency work required by the bureau of water is different in character from the ordinary work of bureau employees and the necessity for such work has arisen since the passage of the annual appropriation bill of 1941, then regular employees of the bureau may be employed to perform this emergency work out of regular working hours and their payrolls charged to an account for salaries and wages for emergency work.

Citations:
Cases: May v. City of Chicago, 222 Ill. 595 (1906).
Gotheman v. City of Chicago, 263 Ill. 292 (1914).
Other reference: Webster's New International Dictionary (2d Ed.).

SUBJECTING CITY SALARIES TO FEDERAL TAX LIEN

(No. 10549—City Comptroller—J. F. G.—October 28, 1941.)

Although salaries of city officers and employees are not usually subject to attachment, garnishment or creditors' suits for payment of their debts, this local rule may not be used to defeat a federal tax lien. Therefore, the comptroller should comply immediately with the notice of levy for federal taxes upon salary monies due a city fireman.

Citations:
Statute: 26 U. S. C. A., secs. 3690, 3710.
Cases: Merwin v. City of Chicago, 45 Ill. 133 (1867).
Goodwine State Bank v. Wise, 263 Ill. App. 291 (1931).
U. S. v. City of New York, 82 F. (2d) 242 (1936).
U. S. v. American Exchange Irving Trust Co., 43 F. (2d) 829 (1930).
Karno-Smith Co. v. Maloney, 28 F. Supp. 907 (1939).

OPINION OF FOREGOING SYNOPSIS

With your letter of October 7, 1941 you transmitted notice of levy of the collector of internal revenue upon money due and unpaid from William H. Dunn, a city fireman, for payment of taxes, together with penalties and interest, levied by the United States of America; also copy of notice of tax lien under internal revenue laws and warrant for distraint against William H. Dunn.

The warrant for distraint was issued by the collector of internal revenue pursuant to authority of the Internal Revenue Code (26 U. S. C. A., Sec. 3690) which provides:

> "If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid."

Section 3710 (26 U. S. C. A.) provides:

> "(a) Requirement. Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.
>
> "(b) Penalty for violation. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.
>
> "(c) Person defined. The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

As a general rule, in Illinois the salaries of officers and employees of the city are not subject to attachment, garnishment or creditors' suits for payment of their debts. This rule is based upon grounds of public policy that the administration of government should not be interfered with nor harassed by such proceedings. (*Merwin* v. *City of Chicago, etc.*, 45 Ill. 133 (1867); *Goodwine State Bank* v. *Wise,* 263 Ill. App. 291 (1931).)

However, immunity from the reach of creditors accorded by local law may not defeat a federal tax lien. (*United States* v. *City of New York,* 82 F. (2d) 242 (1936).) It has been said authoritatively that the only excuse recognized by the federal statutes for failure to comply with the demand of the internal revenue collector is limited to an attachment or execution under any judicial process. No defense which the taxpayer may have against the payment of a tax is available to any person in possession of property or money due to the taxpayer. (*United States* v. *American Exchange Irving Trust Co.,* 43 F. (2d) 829 (1930); *Karno-Smith Co.* v. *Maloney,* 28 F. Supp. 907 (1939).)

If the city should refuse to turn over to the collector of internal revenue the amount owing to William H. Dunn at the time of the service

of the notice of levy it would be liable not only for the amount then due William H. Dunn as salary but also for the costs and interest from the date of the levy under Section 3710 (b) above quoted. We, therefore, advise immediate compliance with the demand.

WAGES OF PAINTERS ENGAGED IN MAINTENANCE WORK

(No. 10614—Committee on Finance—A. F. G.—March 4, 1942.)

Painters employed by the city on maintenance work or new construction work not the subject of contract are not subject to the Prevailing Wage Law.

Citations:
Statute: IRS '41, 48: 39s-1 to 39s-12.
Cases: Mayhew v. Nelson, 346 Ill. 381 (1931).
Reid v. Smith, 375 Ill. 147 (1940).

Opinion No. 10653 of June 19, 1942, to the Mayor by A. F. G. holds substantially the same as the above opinion.

PREVAILING WAGE ACT AS AFFECTING PAINTERS EMPLOYED BY THE CITY

(No. 10673—Illinois State Federation of Labor—B. H.—August 5, 1942.)

The Prevailing Wage Act is limited in scope to workmen and mechanics employed by contractors or subcontractors engaged in the execution of a contract or contracts for public works and not to workmen employed directly by the city. Painters employed by the city at salaries or wages fixed in the annual appropriation bill are not employed under contract but are employed pursuant to the Civil Service Law which conclusively precludes a contractual relationship between the city and its employees.

Citations:
Cases: Mayhew v. Nelson, 346 Ill. 381 (1931).
Reid v. Smith, 375 Ill. 147 (1940).
Hughes v. Traeger, 264 Ill. 612 (1914).

OPINION OF FOREGOING SYNOPSIS

As suggested by you, the mayor has referred to me your letter of July 15, 1942 regarding the wage scale of painters employed by the city.

This subject has already received our very careful consideration in the light of the opinion of the Attorney General of the State of Illinois and the contentions of the officers of Painters' District Council No. 14.

Because of my own and the mayor's sincere interest in organized labor and in maintaining the fullest cooperation between the city and ISFL, I am particularly anxious that there be no misunderstanding.

We have held that the Prevailing Wage Act does not apply to the eighty-four painters employed by the city in various divisions of the department of public works. Our opinion was based on a thorough study not only of the present Act but of the two previous Acts bearing on the same subject which were declared unconstitutional by our courts. (*Mayhew* v. *Nelson,* 346 Ill. 331 (1931) and *Reid* v. *Smith,* 375 Ill. 147 (1940).)

The title of the present Prevailing Wage Act reads, "An Act regulating wages of laborers, mechanics and other workmen employed under contracts for public works." We have held that the title of the Act limits its scope to workmen and mechanics employed by the contractors or subcontractors engaged in the execution of a contract or contracts for public works and not to workmen employed directly by the city as are the painters.

You suggest that the title of the Act refers to workmen "under contracts"; that the painters working for the city are necessarily under contract of employment and therefore within the scope of the Act. There are two indefensible objections to such an interpretation: first, the term "under contracts" in the title of the Act specifically refers to a particular kind of contracts and it is not contracts of employment but contracts for public works; second, persons employed by the city for salaries or wages fixed in the annual appropriation ordinance are not employed under contract but are employed pursuant to the civil service law which conclusively precludes a contractual relationship between the city and its employes. (*Hughes* v. *Traeger,* 264 Ill. 612 (1914).)

You suggest, also, that a broader interpretation of the scope of the Act is borne out by the plain and unmistakable language of the body of the Law. Your reference is to sections 1, 2 and 3 of the Act.

Section 1 is a declaration of policy of the state that the prevailing rate shall be paid to all workmen employed by or on behalf of the state, city, etc., engaged in public works exclusive of maintenance work.

Section 2 defines the term "public works" to be construction work done under the direction and supervision or by authority of any municipality; also any construction or repair work done under contract and paid for in whole or in part out of public funds.

Section 3 provides that not less than the general prevailing rate of wages shall be paid to all workmen employed by or on behalf of the city engaged in the construction of public works, exclusive of maintenance work.

This language read alone may justify your conclusion that besides construction or repair work done under contract (let by the city) the prevailing wages shall be paid to all workmen employed under the direction and supervision or by authority of the city. However, as we have already pointed out, such an interpretation of the Act would merely prove the Act unconstitutional or, at least, prove these provisions to be unconstitutional because they contravene the scope or purpose of the Act as expressed in its title. According to our constitution every Act must deal with a single subject and that must be expressed in the title. The purpose of this wise provision of our constitution is to prevent fraud or misunderstanding in the passage of an Act.

The broad interpretation requested by you is also in direct conflict with other language in the body of the Act. Section 3 provides in part: *"Only such laborers, workmen and mechanics as are directly employed by contractors or subcontractors in actual construction work * * * shall be deemed to be employed upon public works."*

Besides, both Sections 1 and 3 expressly exclude "maintenance work" from the prevailing wage rule. The annual appropriation ordinance for the year 1942 provides for the employment of painters in the building *maintenance* and *repair* division of the department of public works. There is also an appropriation from the construction division capital account of the water fund for the employment of painters, but that fact is no indication that these men are doing work of construction any more than are clerks, stenographers, cost analysts, motor boat launch operators and other such employes who are also paid out of the construction division capital account. In any event, they are not employed by "contractors or subcontractors" as is plainly required by Section 3 of the Act.

For the reasons given we have reluctantly reached the conclusion that the Prevailing Wage Act does not apply to our eighty-four painters. Of course, our opinion has nothing to do with the economic or social problem involved. That is a matter exclusively in control of the lawmaking bodies of the state and the city.

WAGE FREEZING ORDER AS AFFECTING POLICE AWARDS FOR MERITORIOUS SERVICE

(No. 10703—Commissioner of Police—F. V. M.—November 12, 1942.)

Payment of bonuses for distinguished service in the police department is not affected by the national wage freezing order.

Citation: Regulations relating to wages and salaries issued by the Director of Economic Stabilization in accordance with Public Law No. 729, 77th Cong., 2d Session, Secs. 4001.13, 4001.1, 4001.6.

CHAPTER III

ANNUITIES AND BENEFITS FOR CITY EMPLOYEES

A. MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND

SUBSEQUENT CONTRIBUTIONS WHEN NO DEDUCTIONS MADE

(No. 10329—Retirement Board, Municipal Employees' Annuity and Benefit Fund—G. F. M.—August 12, 1940.)

A "future entrant" under the Municipal Employees' Annuity and Benefit Fund, who has recovered by court order back salary from which no deductions had been made for said fund, is not required to make such contributions, as his annuity is based solely on the accumulation to his credit. In the absence of such deductions or contributions, no "city contributions" can be credited to his account.

If such employee desires, he may contribute to said fund an amount equal to the sum that would have been credited to him had salary deductions been made during the entire period, and the city should then contribute an amount equal to one and ten-thirteenths of whatever amount the employee thus pays.

Citation: IRS '39, 24: 1054, 1055, 1059.

SOCIAL SECURITY TAX AFFECTING ELIGIBILITY TO MEMBERSHIP IN ANNUITY AND BENEFIT FUND

(No. 10349—Retirement Board, Municipal Employees' Annuity and Benefit Fund—G. F. M.—October 2, 1940.)

The payment of a tax on salary under the Social Security act is not payment into a pension fund and does not affect eligibility to membership in the Municipal Employees' Annuity and Benefit Fund or to membership on the board.

PENSION DUE MENTALLY ILL EMPLOYEE

(No. 10403—Commissioner of Police—F. V. M.—January 14, 1941.)

When an employee is mentally ill and a conservator has been appointed for the estate of such employee, the conservator may, if authorized by order of court, sign a resignation on behalf of such

employee and receive his age and service pension from the Municipal Employees' Annuity and Benefit Fund.

Citations:
Statute: IRS '39, 3: 121, 122, 123.
Other references: 19 Op. Corp. Coun. (1936-37), p. 402 (No. 9288).
20 Op. Corp. Coun. (1938-39), p. 38 (No. 10039).

PENSION DEDUCTIONS DURING LEAVE OF ABSENCE AND PERIOD OF SERVICE WITH ARMED FORCES

(No. 10718—Committee on Utilities—G. F. M.—December 5, 1942.)

Pension deductions shall be made and paid into the Municipal Employees' Annuity and Benefit Fund for all periods during which an officer or person holds any position in the service of a municipal corporation, and for such period as he serves with the armed forces of the United States.

Citations:
Statute: IRS '41, 24: 1055, 1085; 24½: 150.

SALARY DEDUCTIONS DURING TEMPORARY TRANSFER OF EMPLOYMENT

(No. 10730—Retirement Board, Municipal Employees' Annuity and Benefit Fund—G. F. M.—December 21, 1942.)

Where a civil service employee is assigned to temporary employment under the jurisdiction of the head of a city department, salary deductions shall be made and paid into the annuity and benefit fund in like manner and amount as though he were still filling his civil service position.

Citations:
Statute: Municipal Employer's Annuity and Benefit Fund Act, Sec. 42.

B. FIREMEN'S ANNUITY AND BENEFIT FUND

ACTION-OVER UNDER DEATH BENEFIT FUND ACT

(No. 10169—Committee on Finance—G. F. M.—January 3, 1940.)

Where a fireman meets death through the negligence of a third party and not through negligence of the city, the city has a right of action-over against the original tort-feasor under the statute governing the Policemen's and Firemen's Death Benefit Fund. The city may also agree with the widow of the deceased fireman that she join the

city in an action-over against the tort-feasor and share in the recovery.

Citations:
Statute: IRS '39, 24:969(b).
Case: Castner v. Walrod, 83 Ill. 173, 178 (1876).

REFUND OF WIDOW'S ANNUITY DEDUCTIONS TO BACHELOR

(No. 10291—Retirement Board, Firemen's Annuity and Benefit Fund—G. F. M.—June 13, 1940.)

A beneficiary under the Firemen's Annuity and Benefit Fund, who reaches the age of fifty-seven years and is unmarried, is entitled to a refund of his salary deductions for widow's annuity purposes but not a refund of city contributions for that purpose.

Citations: IRS '37, 24: 989.
IRS '39, 24: 944.39(5c), 944.46, 944.55, 989(h).

REFUND OF SALARY DEDUCTIONS TO WIFE OF DISCHARGED FIREMAN

(No. 10361—Retirement Board, Firemen's Annuity and Benefit Fund—G. F. M.—November 1, 1940.)

A fireman who has been discharged by the civil service commission and who has not made application for refund of salary deductions is not an annuitant, pensioner, applicant for a refund or disability beneficiary. Therefore, his wife is not entitled to an allowance for the support of a minor child out of the salary deductions standing to his credit.

Citation: IRS '39, 24: 944.59.

WIDOW'S ANNUITY FOR FRACTION OF MONTH

(No. 10405—Firemen's Annuity and Benefit Fund, Retirement Board—G. F. M.—January 15, 1941.)

When a widow's annuity began on September 6th and she died on December 30th, her estate is entitled to payment of annuity only for the first five days in December since checks are issued the first of each calendar month irrespective of the beginning of the annuity month and the law prohibits payment for fractional parts of the annuity month.

Citations: IRS '39, 24: 944.15.
Policemen's Annuity and Benefit Fund act, secs. 15, 52.

SERVICE CREDITS DURING PENSION PERIOD

(No. 10463—Firemen's Annuity and Benefit Fund, Retirement Board—G. F. M.—April 22, 1941.)

No service credits can be given a fireman for the period during which he received a disability pension.

Citation: IRS '39, 24: 944-51.

REFUNDS OF SALARY DEDUCTIONS

(No. 10464—Firemen's Annuity and Benefit Fund, Retirement Board—G. F. M.—April 22, 1941.)

When a fireman was paid an annuity in the form of a "disability pension" as provided for in the Firemen's Annuity and Benefit Fund act for an amount upward of $4000 and his salary deductions for his own annuity amounted to $616, then there is nothing refundable to his estate out of this item.

The salary deductions for widow's annuity purposes, however, are refundable to his estate when the annuitant had never married.

Citations: IRS '39, 24: 944.39 (e), 944.52.

DEDUCTIONS COVERING PERIOD OF PRIOR SERVICE

(No. 10685—Retirement Board, Firemen's Annuity and Benefit Fund—G. F. M.—September 14, 1942.)

The 1941 Firemen's Annuity and Benefit Fund Act which requires that each participant in the 1917 Firemen's Pension Fund be included in the 1941 Fund and be given prior service credit and charged with deductions therefor is mandatory. Mistake which resulted in prior service contributions not having been made does not absolve the employee from back payment thereof, with interest. This amount, unless paid, must be set off against any benefits to which he became entitled.

Citations:
Statute: IRS '41, 24: 932a, 944:12, 944:51.

PENSION RIGHTS UPON REINSTATEMENT

(No. 10686—Retirement Board, Firemen's Annuity & Benefit Fund—G. F. M.—September 14, 1942.)

A fireman who resigns from the service and receives a refund of his pension accumulations and is later restored to his former position

regains certain pension rights in the Firemen's Annuity and Benefit Fund upon repayment of the amount due, with interest. He does not regain those rights pertaining to parents' annuity, widow's annuity, and receipt of half salary after twenty years of service.

Citations:
Statute: IRS '41, 24: 944.39.

C. POLICEMEN'S ANNUITY AND BENEFIT FUND

REFUND OF CONTRIBUTIONS TO PENSION AND ANNUITY FUNDS

(No. 10223—Policemen's Annuity and Benefit Fund—G. F. M.—March 19, 1940.)

Contributions by employees to the Police Pension Fund are not refundable, since such payments are construed to be payments by the city and not payments by the employees.

Contributions made to the Policemen's Annuity and Benefit Fund are refundable to the widow or administrator upon the contributor's death when the amounts deducted exceed the amount paid out in the form of annuities to the policeman or widow. When a policeman's right to an annuity was fixed on September 1, 1922 and deductions were made subsequent thereto, but no annuity had been paid at any time, then all deductions made to the Policemen's Annuity and Benefit Fund should be refunded to the administrator of the policeman's estate, together with interest on those deductions to the date of his death.

Citations:
Statutes: IRS '39, 24: 961, 983.
Cases: Hughes v. Traeger, 264 Ill. 612 (1914).
Pecoy v. City, 265 Ill. 78 (1914).

DISPOSAL OF FUNDS CREDITED TO BENEFICIARY LEGALLY DEAD

(No. 10290—Retirement Board, Policemen's Annuity and Benefit Fund—G. F. M.—June 12, 1940.)

Where a beneficiary under the Policemen's Annuity and Benefit Fund, disappears and is subsequently declared dead, any money to his credit in said fund on the date of such declaration, becomes a part of his estate and may properly be paid to his administrator.

Statute: IRS '39, 24: 1000, 1003.
Cases: Reedy v. Millizen, 155 Ill. 636 (1895).
Donovan v. Major, 253 Ill. 179 (1912).
Campbell v. Northwestern Mut. Life Ins. Co., 281 Ill. App. 158 (1935).
Davis v. Metropolitan Life Ins. Co., 285 Ill. App. 398 (1936).

BENEFIT PAYMENTS TO INSANE MINOR ANNUITANT

(No. 10351—Retirement Board, Policemen's Annuity and Benefit Fund—G. F. M.—October 7, 1940.)

The benefits accruing to an insane minor annuitant of the Policemen's Annuity and Benefit Fund after he has reached the age of eighteen may be paid over to the person providing for such minor to the amounts standing to his credit until the fund is exhausted, or until such minor is restored to sanity, or until he reaches the age of twenty-one years.

Citation: Policemen's Annuity and Benefit Fund, sec. 58.

ANNUITY CREDITS TO "FUTURE ENTRANT" DURING PERIOD OF NON-SERVICE

(No. 10389—Retirement Board, Policemen's Annuity and Benefit Fund—G. F. M.—December 20, 1940.)

As a policeman entering the service after January 1, 1922, is a "future entrant" in the Policemen's Annuity and Benefit Fund, no credits for annuity purposes can be given him for periods of time during which he did not work or received any salary and made no contributions to the fund. Credits for future entrants are based primarily upon deductions from salary.

Citation: IRS '39, 24: 1055, 1059.

WIDOW'S PENSION AFTER ILLEGAL MARRIAGE

(No. 10404—Policemen's Annuity and Benefit Fund, Retirement Board —G. F. M.—January 15, 1941.)

The marriage of a divorced woman to a policeman in 1906 in violation of her divorce decree that she shall not marry again within one year, was validated by the 1923 statute repealing the section of the divorce law upon which the decree was based, and this policeman's widow is entitled to a pension notwithstanding that the policeman retired on pension in 1913 and they were remarried in 1914, since the first marriage was validated by law.

Citations: IRS '05, 40: 1a.
IRS '39, 40:2.

SALARY DEDUCTIONS DURING PERIOD OF ILLEGAL DISCHARGE

(No. 10447—Policemen's Annuity and Benefit Fund, Retirement Board —G. F. M.—March 28, 1941.)

When a court order reinstated a patrolman on the ground of illegal discharge and directed payment of his salary for such period, proper deductions should have been made from his salary and paid to the Policemen's Annuity and Benefit Fund. When such deductions were not made and the full amount was erroneously paid to the policeman, the amount of the statutory salary deductions and interest thereon should be charged to his account and recouped from any future annuity or benefit paid to him.

Citations:
Statute: IRS '39, 24: 954, 956, 957, 961, 966, 1003.
Other reference: 12 Op. Corp. Coun. (1923-24), p. 302.

CITY CONTRIBUTIONS DURING DISABILITY PERIOD

(No. 10478—Policemen's Annuity and Benefit Fund, Retirement Board —G. F. M.—May 16, 1941.)

The city should contribute to the Policemen's Annuity and Benefit Fund according to the salary a disabled policeman would receive were he in active service, instead of according to the amount of his duty disability benefits actually received.

Citations: IRS '39, 24: 989 (h).
Police Pension Act, sec. 10.

WIDOW'S PENSION WHEN DIVORCE FROM FIRST HUSBAND IN DOUBT

(No. 10532—Retirement Board, Policemen's Annuity and Benefit Fund—G. F. M.—September 11, 1941.)

In the absence of positive proof that the first husband of the applicant for a widow's pension did not in fact procure a divorce from her before he married for the second time, the law will presume the validity of claimant's second marriage to a policeman, and she is entitled to a pension as his widow.

Citations:
Cases: Harris v. Harris, 8 Ill. App. 57 (1880).
Johnson v. Johnson, 114 Ill. 611 (1885).
Schmisseur v. Beatrie, 147 Ill. 210 (1893).
Crysler v. Crysler, 330 Ill. 74 (1928).
Criss v. Industrial Commission, 348 Ill. 75 (1932).
Flynn v. Troesch, 373 Ill. 275 (1940).

WIDOW'S PENSION WHEN EVIDENCE OF MARRIAGE INCOMPLETE

(No. 10535—Retirement Board, Policemen's Annuity and Benefit Fund—G. F. M.—September 25, 1941.)

Until the order of the Probate Court finding that a woman is the widow of a policeman is set aside by evidence that she was not actually married to the policeman, she is entitled to a widow's pension notwithstanding the fact that no marriage license has been returned to the county clerk for registration.

Citations:
Cases: O'Brien v. Eustice, 298 Ill. App. 510 (1939).
Ford v. Ford, 117 Ill. App. 502 (1905).

D. OTHER ANNUITY AND BENEFIT FUNDS

REFUND OF SALARY DEDUCTIONS

(No. 10224—House of Correction Employees' Pension Fund—G. F. M. —February 29, 1940.)

An employee of the House of Correction who had been granted extended leaves of absence from 1934 to 1940 and then resigned in February, 1940 is entitled to a refund of the contributions paid into the House of Correction Employees' Pension Fund when he applied for such refund within three months of his resignation.

Citation: IRS '39, 67:19.

INVESTMENT OF PENSION FUNDS

(No. 10255—House of Correction Employees' Pension Fund—G. F. M. —April 25, 1940.)

The board of trustees for the House of Correction Employees' Pension Fund has no authority under existing laws to invest its funds in general water and sewer revenue bonds but only in the bonds of the state, county and city in which the fund is operating.

Citation: IRS '39, 67: 21.

COMPUTATION OF ANNUITY

(No. 10416—Board of Election Commissioners Employees' Annuity and Benefit Fund—G. F. M.—February 10, 1941.)

A member of the Board of Election Commissioners Employees' Annuity and Benefit Fund who is fifty-five or more years of age and

who has served sixteen years, became entitled to an annuity equal to his own accumulation from salary deductions and six-tenths of the city's contributions, both for "prior service" and for "age and service" annuity purposes.

Citations: IRS '39, 46: 496, 507, 526.

CHANGING AGE STATEMENT

(No. 10488A—Board of Election Commissioners Employees' Annuity and Benefit Fund—G. F. M.—June 6, 1941.)

The retirement board has the power to enter an order that for the purpose of annuity, benefit or other payment, the date of birth shall be as stated in a birth certificate rather than as stated in the application.

Citation: Board of Election Commissioners Employees' Annuity and Benefit Fund act, sec. 56.

RIGHTS OF PARTICIPANTS WHILE IN U. S. ARMED FORCES

(No. 10582—Retirement Board, Municipal Court and Law Department Employees' Annuity and Benefit Fund—G. F. M.—January 14, 1942.)

The annuity rights of contributors of the Municipal Court and Law Department Employees' Annuity and Benefit Fund are preserved during the period of training and service in the armed forces of the United States.

The Municipal Court of Chicago is the judicial branch of the city government.

Citations:
Statute: IRS '41, 24½: 150.
Ordinance: Coun. J. (11/6/40), p. 3411.
Case: Ptacek v. Coleman, 364 Ill. 618 (1936).

CHAPTER IV
RELATIONS OF CITY WITH OTHER GOVERNMENTS

A. CHICAGO HOUSING AUTHORITY

WAIVER OF INTEREST ON LOAN

(No. 10177A—City Comptroller—A. F. G.—January 16, 1940.)

The city council has authority to waive interest on loans made by the city to the Chicago Housing Authority, such waivers being in the nature of "donations" as permitted by the Housing Cooperation act.

PAYMENTS IN LIEU OF TAXES TO CITY ALONE

(No. 10187—City Comptroller—A. F. G.—January 29, 1940.)

An ordinance which authorizes the comptroller to enter into an agreement with the Chicago Housing Authority for the payment to the city alone of 5% of the shelter rentals of its project in lieu of taxes for all corporate purposes imposes an obligation on the Housing Authority not contemplated by the law which authorizes the city to act as agent for all taxing bodies.

Citations:

Statutes:	**Housing Authority Act, sec. 29.**
	IRS '39, 67½: 32b.
Ordinance:	**Coun. J. (1939-40) p. 1788.**
Case:	**Krause v. Peoria Housing Authority, 370 Ill. 256, 367 (1939).**

OPINION OF FOREGOING SYNOPSIS

On January 23, 1940 you sent to this office the following letter:

"The city council on January 17th, C. J., page 1788, directed the city comptroller to tender to the Chicago Housing Authority an agreement for the payment of 5% of shelter rentals of the Julia C. Lathrop Home, the Trumbull Park Home and the Jane Adams Houses in lieu of taxes for the year 1939.

"At your convenience, will you kindly prepare a form of agreement to be tendered, obligingly."

The ordinance passed by the city council January 17, 1940 (C. J., page 1788) and referred to in your letter is not in accord with the law on the subject and should be reconsidered by the city council. The authority of the city to enter into such agreements with a housing authority is found in section 5b of the "Housing Cooperation Law," Ill. Rev. Stat. 1939, chap. 67½, par. 32b, p. 1784, which is as follows:

"5b. Any city, village, incorporated town or county for which a housing authority has been created may enter into such agreements

with its respective housing authority as are authorized by section 29 of 'An Act in relation to housing authorities,' approved March 19, 1934, as amended."

Section 29 of the "Housing Authorities Act" referred to in the section last quoted reads:

"29. With respect to any housing project of a housing authority, the housing authority shall, after such project has become occupied, either in whole or in part, file with the proper assessing authority on or before April 1 of each year, a statement of the aggregate shelter rentals of each such project collected during the preceding calendar year; and, unless a different amount has been agreed upon between the housing authority and the city, village, incorporated town or county for which the housing authority was created, five (5) per cent of such aggregate shelter rentals shall be charged and collected as a service charge for the services and facilities to be furnished with respect to such project, in the manner provided by law for the assessment and collection of taxes, and the amount so collected shall be distributed to the several taxing bodies in such proportions that each taxing body will receive therefrom the same proportion as the tax rate of such taxing body bears to the total tax rate that would be levied against the project if it were not exempt from taxation. A city, village, incorporated town or county for which a housing authority has been created may agree with the housing authority, with respect to any housing projects, either separately or jointly or one or more of them, for the payment of a service charge in an amount greater or less than five (5) per cent of the aggregate annual shelter rentals of any project, upon the basis of shelter rentals or upon such other basis as may be agreed upon, but not exceeding the amount which would be payable in taxes thereon were the property not exempt, and, if such an agreement is made, the amount so agreed upon shall be collected and distributed in the manner above provided. Shelter rental shall mean the total rentals of a housing project as such project is defined in the twelfth subsection of section 2 of 'An Act for the assessment of property and for the levy and collection of taxes,' approved March 30, 1872, as amended, exclusive of any charge for utilities and special services such as heat, water, electricity and gas. The records of each housing project shall be open to inspection by the proper assessing officers."

In construing the powers of cities conferred by the sections quoted above, the Supreme Court of this state said:

"* * * It will be noticed that under the provisions of the act giving the cities power to agree as to service charges, it is provided that 'the amounts so collected shall be distributed to the several taxing bodies in such proportions that each taxing body will receive therefrom the same proportion as the tax rate of such taxing body bears to the total tax rate that would be levied against the project if it were not exempt from taxation.' Thus no one taxing body is given any preference over any other. The city is made an agent by section 5b of the Housing Cooperation act to contract for all taxing bodies. It would be impossible for each of the taxing bodies to be appointed as agent for the purpose of contracting with the housing authority and hope to carry on the work of such authority efficiently and without discrimination. The city is primarily interested in the housing project and it is entirely reasonable to appoint it as agent to contract for all taxing bodies. * * *" *Krause* v. *Peoria Housing Authority,* 370 Ill. 356, at p. 367.

In our opinion the ordinance which authorized you to enter into an agreement with the Housing Authority for the payment of the city of Chicago alone of 5 per cent of the shelter rentals of its projects for all corporate purposes imposes an obligation on the Housing Authority not contemplated by the law.

PURCHASE OF COAL FOR HOUSING PROJECT

(No. 10188—Chicago Housing Authority—N. N. E.—February 1, 1940.)

The Chicago Housing Authority is empowered to enter into a contract for the purchase of coal for one of its projects.

Citation: IRS '39, 67½: 2.8.

SELLING LAND TO HOUSING AUTHORITY

(No. 10242—City Comptroller—N. N. E.—April 12, 1940.)

The city may sell real property to the Chicago Housing Authority without advertising for bids. It is doubtful whether the city may grant the Authority an option for the sale of property.

Citations: IRS '39, 24: 512, 513, 514.
IRS '39, 30: 156, 157.
IRS '39, 67½: 31.

SOCIAL SECURITY EXEMPTION FOR HOUSING EMPLOYEES

(No. 10245—Chicago Housing Authority—N. N. E.—April 16, 1940.)

The Chicago Housing Authority is an instrumentality of the state created by statute to exercise certain governmental functions, and therefore no social security taxes are assessable against the local authority for its employees.

Employees on the supervisory staff of the Chicago Housing Authority are considered as employees of the local Authority rather than of the architect and are exempt from the provisions of the Social Security act.

Citations:
Statute: Social Security act, as amended in 1939, sec. 209, par. 7.
Other references: 19 Op. Corp. Coun. 332 (No. 9720).
Internal Revenue Code, sec. 1410.

EXCESS CONDEMNATION OF PRIVATE PROPERTY

(No. 10254—Executive Secretary, Chicago Housing Authority—A. F. G.—April 24, 1940.)

The Chicago Housing Authority has no power to condemn land adjacent to one of its projects and sell or lease this land to a private corporation for development.

Citations:

Statute: Housing Authorities act, sec. 9.

Cases: Bell v. Mattoon Water Works Co., 245 Ill. 544 (1910).
C&EI RR. Co. v. Wiltse, 116 Ill. 449 (1886).
Sholl v. German Coal Co., 118 Ill. 427 (1887).
Ligare v. City of Chicago, 139 Ill. 46 (1891).
C&NW Ry. Co. v. Galt, 133 Ill. 657 (1890).
Pitznogle v. Western Maryland RR. Co., 119 Md. 673, 46 LRA (NS) 319 (1913).
Donahy v. Rogers, 281 US 362 (1929).
Brown v. United States, 263 US 78 (1923).

OPINION OF FOREGOING SYNOPSIS

Recently you requested our opinion on the following matters:

"(1) Can the Chicago Housing Authority condemn land adjacent to one of its projects and sell this land to a private corporation for development?

(2) Would such corporation have to enter into some agreement that this land be used for low-rent housing, or for the lower income group?

(3) What sort of agreement could be made with such a corporation?

(4) If the Housing Authority is not able to sell such land, could it enter into a 99-year lease with a private corporation for the ground only, such lease to contain stipulations as to its use?"

You advise us that the purpose you have in mind and which prompts your first question is: you propose to condemn a certain tract of land for a low rent housing project which you have power to do under section 9 of the "Housing Authorities Act." You state that in making a preliminary survey to this end that it develops that a number of persons whose property would be taken have lived in this vicinity for many years and are loath to abandon the neighborhood. They have advised your body that if the Authority can provide them with housing facilities in the general vicinity of their present homes substantially equivalent to their present accommodations they will offer no objections to the condemnation of their property.

You inquire, if, in addition to the acquisition by condemnation of the property for the housing project, you may condemn adjacent property not needed for the project itself and sell this land to a private corporation to provide accommodations for the aforesaid objectors.

Our answer to your first question is "no". A municipal corporation endowed with the power of eminent domain can only exercise that power for a public purpose. In *Bell* v. *Mattoon Water Works Co.*, 245 Ill. 544 (1910) a water works company condemned land for a reservoir. About

one-third of the land so acquired was at such an elevation above the dam as to make it a physical impossibility to use it for this purpose. The court said:

> "Property condemned for public use cannot be devoted to any other use than that for which it was taken. Where its use for that purpose becomes impossible, the effect is the same as abandonment and there is a reverter to the owner of the fee."

A housing authority is empowered to condemn property only for slum clearance and low rent housing projects. Here it is proposed that the Authority condemn such property as is necessary for a low rent housing project and also to condemn additional adjacent property for the purpose of selling such additional property to a private corporation for the development of home sites for persons not eligible to tenancy in projects for which the Authority may condemn property.

Statutes conferring power to exercise the right of eminent domain are to be construed strictly. Unless both the letter and spirit of the statute relied upon clearly confers the claimed power it cannot be exercised. The person or corporation which the statute says may exercise the right for a stated purpose may exercise it for that purpose, but for none other. *Railroad Co.* v. *Wiltse,* 116 Ill. 454 (1886); *Sholl* v. *Coal Co.,* 118 Ill. 427 (1887).

In *Ligare* v. *City of Chicago,* 139 Ill. 46 (1891) the city of Chicago by an ordinance attempted to widen a certain street and by a second ordinance, passed the same day, gave to certain railroad companies exclusive use of all the old street and part of the new street added by the widening. Condemnation was authorized by the first ordinance. The court treated the case as if both ordinances had been embodied in one, as a single ordinance for widening a street and at the same time giving the exclusive use of all the old street and part of the new to certain railroads for laying and operating their tracks. The court, after citing its holding in *C. & N. W. Ry. Co.* v. *Galt,* 133 Ill. 657 (1890) that a railroad company under authority to condemn property for its right of way, cannot condemn property for a street of a city; said:

> ". . . and, obviously, if this be true the reverse must also be true,—a city can not, under authority to condemn property for streets, condemn property for a railroad track, for the principle must be the same.
>
> "But may the city here do indirectly, by mere change in the form, that which it can not do directly? Although the city may not condemn property for the use of the railroad company, yet inasmuch as it may allow railroad tracks to be laid in its streets, may it not first condemn property for itself and then afterwards allow the railroad tracks to be laid upon it to the extent of excluding all other uses? But we have seen that under the power merely to authorize railroad tracks to be laid on streets, a city has no right to authorize railroad tracks to be laid upon streets so as to exclude the other public uses of the street so long as it shall remain a public street, and here it is shown that the condemnation is for the express purpose of enabling the city to give an exclusive use of a part of the old street, and thirty feet of additional space, to the exclusive use and occupation of railroad companies. The substance is not to be lost sight of through any mere jugglery in the use of words. This proceeding is, in fact, not for the city, but for the railroad companies. Between condemning for the railroad companies and condemning for the city to then give to the railroad companies, there is, in legal effect, and so far as concerns this case, no difference,—they are precisely the same thing."

Your case seems analogous. Under power to condemn for low rent housing projects, the Authority proposes to condemn property not needed for that purpose, but to turn over to private corporations to provide living accommodations to certain private individuals.

In this case certain owners of property which is to be condemned for the public purposes provided in the Housing Authorities Act, for sentimental reasons or from whim or caprice do not desire to take a monetary consideration for their property, but insist that the Authority condemn property of strangers in order to exchange for the property of which they are to be dispossessed. Such a course if valid would lead to absurd results. If "A" whose property is to be taken for the housing project insists that the property of "B" be condemned to exchange for his thus taken would not "B" have an equal right to insist that "C's" property be condemned to exchange for his given to "A" and so on *ad infinitum*. If the taking of "B's" property can be held to be for a public purpose, then the taking of the property of "C" and "D", etc. would be for an equally public purpose and the process of condemnation would become interminable.

There are reported cases in which private property has been condemned and turned over to others in exchange for property which was taken in condemnation for a public use. Examination of these cases show circumstances which distinguish them from the present case.

In *Pitznogle* v. *Western Maryland R. Co.* (1913), 119 Md. 673, 46 L. R. A. (N. S.) 319 a railroad company condemned a piece of land for its track and yards, and in doing so appropriated a private right of way which was the only means of access possessed by certain other landowners, to the public highway. It was held that the railroad company could condemn an additional strip of land for a substitute right of way to be furnished to these landowners. In reaching this conclusion the court said:

> "The condemnation of a part of this land here sought to be condemned for a substitute private road, or way, is incident to, and results from, the taking by reason of public necessity of the existing private road for public use, and the use of it for such purposes should we think be regarded as a public use within the meaning of the Constitution."

In *Donahy* v. *Rogers* (1929), 281 U. S. 362 the highway commissioner of Michigan in the widening of a public highway required the acquisition of part of a railroad right of way adjoining it. Under a statute authorizing it, the commissioner condemned land on the other side of the right of way and proposed to exchange it for the right of way to be taken. In holding that under the statute the proposed taking was proper, it was said that it was enough that, although the land was to be used as a right of way for a railroad, its acquisition was so essentially a part of the project for improving a public highway as to be for a public use.

An important town, American Falls, in Idaho, stood in the way of a necessary improvement by the United States, that of building a reservoir. Three-quarters of the town would thereby be flooded, and the buildings could not be moved except to the land sought to be condemned, so as to be contiguous to the remaining one-quarter. Negotiations with the plaintiff failed, and the land was condemned. The plaintiff appealed on the ground that the land was not to be devoted to a "public use." It was held in *Brown* v. *United States* (1923), 263 U. S. 78 that the acquisition of the district to be flooded was so necessary to the carrying out of the project, that the public use of the reservoir covered the taking of the townsite. In all three of these cases statutes authorized the method of taking.

In the *Brown* case just referred to after calling attention to the unusual circumstances of the case and the difficulty of owners finding homes similarly situated on streets in another part of the same town, or in another town near at hand the court said: "A method of compensation by substitution would seem to be the best means of making the parties whole." No such difficulty is here presented. In a large city like Chicago any person dispossessed of his home by condemnation would have little difficulty in finding one equally satisfactory elsewhere in the city.

Having seen that the Authority has no power to sell land acquired under its power of eminent domain, it follows that it would have no power to lease such property and so our answer to your other questions is in the negative.

LIABILITY OF CHICAGO HOUSING AUTHORITY TO LAWSUITS

(No. 10315—Chicago Housing Authority—A. F. G.—July 22, 1940.)

The Chicago Housing Authority is subject to suit on its contracts in the same manner as a private corporation, unless such contract was beyond the power of the Authority to make.

Since the functions of the Chicago Housing Authority are solely governmental, it is not answerable in tort for the negligence of its employees.

Citations:
Statute: Housing Authorities act, secs. 8; par. 6; 22.
Other reference: McQuillin, Municipal Corporations (2nd ed.), v. 6, secs. 2650, 2652.

REVERSIONARY INTEREST IN VACATED STREETS AND ALLEYS

(No. 10317—Chicago Housing Authority—A. F. G.—July 26, 1940.)

Where the Chicago Housing Authority has acquired title to property, abutting streets and alleys vacated by the city, but has failed to acquire the outstanding reversionary interests in said streets and alleys, it is essential that the Authority acquire these interests to get good title to said vacated public ways.

EXEMPTION OF FEES FOR WRECKING OF BUILDINGS BY HOUSING AUTHORITY

(No. 10362—Executive Secretary, Chicago Housing Authority—A. F. G.—November 6, 1940.)

The cooperation agreement between the city and the Chicago Housing Authority provides for waiver of building permit and inspection fees, and this includes permit fees for wrecking buildings.

Citations: Mun. Code: 43-21.
Coun. J. (1939-40), p. 2152 (Cooperation Agreement with Chicago Housing Authority).

ABANDONMENT OF APARTMENT AND FURNITURE BY TENANT

(No. 10380—Executive Secretary, Chicago Housing Authority——J. F. O'M.—December 5, 1940.)

When a tenant in a Chicago housing project vacates his apartment and mails his keys to the Chicago Housing Authority, he has abandoned the premises and the Authority has the right and duty to relet the premises. As to the furniture left in the apartment by the tenant which he said would be called for by the owner of the chattel mortgage on it, the Authority may dispose of the furniture, in the absence of a recording of the chattel mortgage. The absence of such recording nullifies it against third persons, and the Authority may institute an action of distress for rent within six months after termination of the tenancy.

Citations:
Statutes: IRS '37, 80: 16 to 35.
IRS '37, 95: 1, 4.
Cases: West Side Auction Co. v. Conn. Mutual Life Ins. Co., 186 Ill. 156 (1900).
Marshall v. Grosse Clothing Co., 184 Ill. 421 (1900).

REPORT OF HOUSING AUTHORITY TO COUNCIL—APPROVAL OF PROJECT SITE

(No. 10394—Alderman, 9th Ward—N. N. E.—December 30, 1940.)

The Chicago Housing Authority is required to make an annual report to the presiding officer of the city, stating the results of its investigations, summarizing its activities and making recommendations for remedying unsafe, insanitary and inadequate housing for persons of low income.

The Authority is not required to secure the consent of the city council to locate a site for a proposed project, but it is required to cooperate with the plan commission. There is no constitutional restriction, however, preventing legislation requiring the Authority to consult also with the city council.

Citation: IRS '39, 67½: 8 (Housing Co-operation law).

ELIGIBILITY OF RELIEF RECIPIENTS AS TENANTS IN HOUSING PROJECTS

(No. 10395—Executive Secretary, Chicago Housing Authority—B. H.—December 31, 1940.)

The United States and state housing acts do not specify the source from which an applicant or tenant in a housing project must derive

his rent payments; nor do they expressly fix a minimum limit to the amount of income which renders an applicant or tenant ineligible.

Relief payments are "income" of the recipients, within the meaning of that word as used in the federal and state housing statutes and in the contract between the United States Housing Authority and the Chicago Housing Authority covering loan and annual contributions. Families receiving relief are not disqualified from becoming tenants in housing projects. However, as an administrative matter, the Authority, in selecting tenants, may consider their ability to pay their rent.

Citations:

Statutes: 42 USCA, sec. 1401, 1402.
IRS '39, 67½: 25.
IRS '39, 107: 14a.

Cases: Income Tax Cases, 148 Wis. 456 (1912).
Eisner v. Macomber, 252 US 189; 40 Sup. Ct. Rep. 189; 9 ALR 1570 (1920).
Bergman v. Buechler, 292 NYS 882; 249 App. Div. 553 (1937).
Passaic National Bank & Trust Co. v. Eelman, 116 NJL 279; 183 Atl. 677 (1936).
Lamar Water & Electric Light Co. v. City of Lamar, 128 Mo. 188; 26 SW 1025; 32 LRA 157 (1895).
Krause v. Peoria Housing Authority, 370 Ill. 356 (1939).

Other references: Contract between USHA and Chicago Housing Authority, for loan and annual contributions (USHA form 700), p. 62.
Words and Phrases '40, v. 20, pp. 455-516.
USHA Bulletin No. 22, Policy and Procedure, p. 19.
Op. of Gen. Coun. USHA.
Hearings, Committee on Education and Labor, S. 4424, 74th Cong., 2nd Sess. (1936); S. 1685, 75th Cong., 1st Sess. (1937).

OPINION OF FOREGOING SYNOPSIS

This acknowledges receipt of your letter of December 24, 1940 requesting an opinion to the Chicago Housing Authority on whether or not the federal and state housing statutes require the Authority to evict a tenant of a housing project who, though privately employed when admitted, is later supported in whole or in part by public relief or charity.

You enclose with your letter a form of the contract between the Chicago Housing Authority and the United States Housing Authority and applicable to certain Chicago projects, the title of the contract being "Terms, Covenants, and Conditions, comprising part two of Contract for Loan and Annual Contributions" (USHA form 700). You also say that our opinion to the Authority of December 9, 1940, in concluding that families on relief or receiving public charity are not "low income families" for whom Congress intended housing projects to be available, apparently conflicts with provisions of the contract. The opinion of December 9, 1940 was rendered pursuant to your narrow inquiry as to whether or not families supported by public relief or charity are "low income families" under the state and federal housing statutes. As a result of your new inquiry with the form of contract enclosed, we have re-examined the entire question of whether or not families on relief are eligible as tenants in

public housing projects under such a contract for loan and annual contributions as you submit and the applicable statutes. This opinion therefore supersedes the opinion of December 9, 1940.

The question you present is whether or not a tenant in a housing project under the jurisdiction of the Chicago Housing Authority is ineligible by statute to continue his tenancy because of the fact that the source of his income is public relief or charity.

In the United States Housing Act of 1937, the only provisions about the income of tenants are the following:

> "(1) The term 'low-rent housing' means decent, safe and sanitary dwellings within the financial reach of families of low income, * * *. The dwellings in low rent housing as defined in this Act shall be available solely for families whose net income at the time of admission does not exceed five times the rental (including the value or cost to them of heat, light, water and cooking fuel) of the dwellings to be furnished such families, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one.
>
> "(2) The term 'families of low income' means families who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe and sanitary dwellings for their use." (42 U. S. C. A., sec. 1402.)

In the Illinois Housing Authorities Act, the only provision about the income of tenants is found in section 25, which imposes the following duties upon local authorities:

> "(a) It shall not accept any person as a tenant in any dwelling in a housing project if the persons who would occupy the dwelling have an aggregate annual income which equals or exceeds the amount which the Authority determines (which determination shall be conclusive) to be necessary in order to enable such persons to secure safe, sanitary and uncongested dwelling accommodations within the area of operation of the Authority and to provide an adequate standard of living for themselves. (b) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of persons who lack the amount of income which it determines (pursuant to (a) of this section) to be necessary in order to obtain safe, sanitary and uncongested dwelling accommodations within the area of operation of the Authority and to provide an adequate standard of living." (Ch. 67½, sec. 25, Ill. Rev. Stat. 1939.)

These provisions do not say anything in express language about the source from which a tenant in a project derives his rent payments, nor do they expressly fix a minimum limit or set forth a standard for fixing a minimum limit to the amount of income which renders a tenant ineligible. The language of these provisions indicates that their only purpose was to disqualify as tenants persons with incomes *above* certain standards therein established, in other words, to fix the *maximum* limit to the amount of income which renders a tenant ineligible.

To reach the conclusion that the source of a tenant's income may not be relief or charity payments, it would be necessary to take the position that the statutory provisions quoted impliedly require the income of a tenant to be derived from labor, business, or property. The theory would be that the state and federal legislatures, in speaking of the "income" of tenants, intended them to have "income" of some kind as that term has been frequently defined in the past and that "income" means gain from labor, business, or property. This theory would exclude as tenants

"poor persons entitled to relief" or "paupers" under the terms of the Illinois relief statutes (ch. 107, Ill. Rev. Stat. 1939).

In passing it is noted that the statutes in the chapter cited use the terms "poor person entitled to relief" and "pauper" as synonyms. Also, the provision empowering the city of Chicago to grant relief funds is in the form of an amendment to an act entitled, "An Act to revise the law in relation to paupers" (ch. 107, sec. 14a, Ill. Rev. Stat. 1939). Thus certainly it is not intended to stigmatize a person on relief to refer to him as a "poor person" or "pauper" in its legal sense.

Of the many judicial definitions of the word "income" as used in various places, some look to the source of the funds and others do not. [See *20 Words and Phrases* (Perm. ed. 1940), pages 455 to 516.] For income tax purposes, when a distinction is desired to be made between capital or principal and income, "income" has been defined as "the gains from lands, business, labor, and the investment of capital." [See Income Tax Cases, 148 Wis. 456 (1912) and *Eisner* v. *Macomber,* 252 U. S. 189, 64 L. Ed. 521, 40 Ct. 189, 9 A. L. R. 1570 (1920).] To determine the income of judgment debtors subject to execution, it has been held that "all moneys coming into the hands of judgment debtors, from whatever source, constitute 'income' ". [See *Bergman* v. *Buechler,* 292 N. Y. S. 882, 884, 249 App. Div. 553 (1937); *Passaic National Bank & Trust Co.* v. *Eelman,* 116 N. J. L. 279, 286, 183 Atl. 677 (1936).] In determining the income of a city to fix its allowable debt limit, "income" has been defined to mean "income derived from any source." [*Lamar Water & Electric Light Co.* v. *City of Lamar,* 128 Mo. 188, 26 S. W. 1025, 1030, 32 L. R. A. 157 (1895).] Examples could be continued to show a variety of definitions of "income", the meaning in each case being largely governed by the context.

Thus the mere use of the word "income" in the statutory provisions that fix a maximum limit on the income of tenants in public housing projects did not thereby impliedly impose a limitation on the source of a tenant's income. If relief funds were necessarily excluded from the meaning of "income", there would be the curious result that relief funds could not be considered in determining whether or not a tenant's income exceeded the permissible maximum.

There has not been a judicial determination of the eligibility of families on public relief for housing projects. But we find that the federal statute has been construed by the United States Housing Authority as rendering them eligible. Its Bulletin No. 22 on Policy and Procedure states that the "net income" of a tenant family means "the aggregate income, in whatever form received," and in defining "aggregate income" it specifically includes "relief payments in cash, and the cash value of relief allowances in kind" (USHA Bulletin No. 22 on Policy and Procedure, p. 19). In similar language the contract between the United States Housing Authority and the Chicago Housing Authority provides that the "net income" of a tenant family means "the aggregate income, in whatever form received, of all members of such family, including * * * relief payments, or contributions from private or public sources and all other receipts from any and all sources whatever" (USHA form 700, p. 62). Also, we now find that the general counsel of the United States Housing Authority has written an opinion that families on public relief are eligible as tenants. He used the following language:

> "Receipts coming from relief or charitable sources are income in fact. They measure ability to pay. They in no way militate against the need of the family for decent housing if it is living under unfit housing conditions. This Authority cannot take the position that income derived from relief or charitable sources disqualifies a family for admission to a project any more than it can take the position

that income from any other sources disqualifies a family for admission to a project.

* * * * * *

"It is concluded, therefore, that payments received from charitable or relief sources shall be treated as any other items of income in determining tenant eligibility under the United States Housing Act." (Opinion of Leon H. Keyserling, General Counsel and Deputy Administrator.)

To exclude families on public relief from housing projects would be inconsistent with the broad social and economic purposes of the housing legislation. The provisions of the statutes indicate that Congress and the Illinois General Assembly believed it to be in the public interest to provide decent housing for families who occupy unsanitary or substandard dwellings. (See 42 U. S. C. A., secs. 1401, 1402; ch. 67½, sec. 2, Ill. Rev. Stat. 1939.) The reports of the hearings of congressional committees with reference to the United States Housing Act of 1937 reveal throughout that this was the broad purpose of the Act. [See Hearings before the Committee on Education and Labor on S. 424, 74th Cong., 2nd Sess. (1936), and on S. 1685, 75th , 1st Sess. (1937).]

The opinion of the Illinois Supreme Court, in upholding the validity of the Housing Authorities Act, quoted with approval the following language about the evils sought to be remedied by housing legislation:

"The public evils, social and economic, of such conditions are unquestioned and unquestionable. Slum areas are the breeding places of disease which take toll, not only from denizens, but, by spread, from the inhabitants of the entire city and state. Juvenile delinquency, crime, and immorality are there born, find protection and flourish." [*Krause* v. *Peoria Housing Authority,* 370 Ill. 356, 369 (1939).]

The same opinion also stated with reference to the public purpose of the Illinois statute:

"The public purpose of the Act lies in providing housing to persons of low income class. Also, as we have said, the entire community will derive some benefit from the slum clearance projects. All persons who come within the standards are eligible when there is sufficient shelter for them." (*Ibid.,* p. 373.)

Bad housing occupied by families on public relief is just as detrimental to the community at large as bad housing occupied by others. The acceptance of relief families as tenants of projects is thus within the purpose of housing legislation to serve the public interest.

From a study of this question of eligibility, we conclude that the problem in the main is an administrative one. Under the present statutes and decisions, there is no minimum amount of money that an applicant or resident must have; nor is an applicant disqualified because supported in whole or in part by relief or charity. Similarly, after a tenant has been admitted to a project, he should not be ejected solely on the ground that he is paying his rent out of relief or charitable funds. This conclusion does not obviate the fact that, as an administrative matter, the practical necessity for continuity of rent payments requires that the ability to pay the rentals fixed by the Authority be considered in selecting particular tenants for admission.

Opinion No. 10383A of December 9, 1940 to the Chicago Housing Authority discusses this same problem.

COMPUTATION OF SERVICE CHARGE—LOCATION OF PROJECT

(No. 10444—City Council—A. F. G.—March 21, 1941.)

Under present law, if the city failed to enter into any agreement with the Chicago Housing Authority for payment of a service charge, each taxing body furnishing service to the project would receive its proportionate share of five per cent of the aggregate shelter rentals charged.

The Housing Authorities act could be amended to require that every cooperation agreement shall specify the location of the projects to be constructed.

Citation: Housing Authorities act, sec. 29.

ARBITRATION OF FUTURE DISPUTES

(No. 10488—Chicago Housing Authority—N. N. E.—May 22, 1941.)

A clause in a contract between the Chicago Housing Authority and a contractor, which attempts to set up a method of arbitrating disputes and controversies which were not in existence at the time of the execution of said contract, is illegal.

Citations:
Statute: Arbitration and Award act, sec. 1.
Case: Cocalis v. Nazlides, 308 Ill. 152 (1923).
Other references: 5 CJ 27.

PERMITS AND INSPECTION SERVICES TO CHICAGO HOUSING AUTHORITY

(No. 10572—Chicago Housing Authority—A. F. G.—December 5, 1941.)

The Chicago Housing Authority or its contractors are entitled to the issuance of permits and the furnishing of inspection service by the city without charge.

Citations:
Statute: IRS '41, 67½: 28 to 37 (Housing Corporation Law).
Ordinance: Coun. J. (3/8/40), p. 2152.

REMOVAL OF IMPROVEMENTS FROM VACATED STREETS

(No. 10616—Chicago Housing Authority—A. F. G.—March 9, 1942.)

The Chicago Housing Authority, for whose benefit streets and alleys were vacated by the city to enable construction of the Frances Cabrini Homes, is charged with the obligation and cost of removing all unwanted improvements in said area.

APPLICABILITY OF ILLINOIS MUNICIPAL BUDGET LAW

(No. 10633—Chicago Housing Authority—A. F. G.—April 24, 1942.)

The Chicago Housing Authority is not subject to the Illinois Municipal Budget Law.

Citations:
Cases: Rouse v. Thompson, 228 Ill. 522 (1907).
People v. C. B. & Q. R. R. Co., 290 Ill. 327 (1919).

PAYMENT AND DISTRIBUTION OF SERVICE CHARGES IN LIEU OF TAXES ON HOUSING PROJECT

(No. 10713—Chicago Housing Authority—N. N. E.—November 24, 1942.)

The Chicago Housing Authority and the city can legally enter into a contract for payment by the authority of certain service charges in lieu of taxes on a particular project. Such an agreement would bind other taxing bodies which share with the city in the proceeds.

Such service charges shall be collected and distributed in the same manner as is provided by law for the assessment and collection of taxes.

Citations:
Statute: IRS '41, 67½: 27B.
Case: Krause v. Peoria Housing Authority, 370 Ill. 356 (1939).

B. FEDERAL RELATIONSHIPS

BUILDING INSPECTION FEES FOR HOME OWNERS' LOAN CORPORATION REAL PROPERTY

(No. 10226—Secretary, Board of Health—A. F. G.—March 21, 1940.)

The Home Owners' Loan Corporation is an instrumentality of the United States and its bonds, capital, reserve, surplus, loans and income are exempt from taxation, while its real property, however, is subject to tax to the same extent as other real property. Such property is subject to the police regulation of the State applicable to all similar property.

The Home Owners' Loan Corporation is liable for the payment of building and plumbing permit inspection fees for property owned by it.

Citations:

Cases: U. S. v. Lee, 106 U. S. 196 (1882).
Sloan Shipyards Corp. v. United States Shipping Bd. Emergency Fleet Corp., 258 U. S. 549 (1922).
Morris v. Duby, 274 U. S. 134 (1926).
Fed. Land Bank v. Grosland, 261 U. S. 374 (1920).
Postal Tel. Cable Co. v. City of Fremont, 255 U. S. 124 (1920).
West. Union Tel. Co. v. Borough of New Hope, 187 U. S. 419 (1902).
St. Louis v. West. Union Tel. Co., 148 U. S. 92 (1892).
Barret v. City of New York, 183 Fed. 793 (1910).
Johnson v. Maryland, 254 U. S. 51 (1920).
People v. U. S., 93 Ill. 30 (1879).
Fagan v. City of Chicago, 84 Ill. 233 (1876).
Pittman v. H. O. L. C., 175 Md. 512 (1938).

Other Reference: 12 U. S. C. A., Sec. 1461 ff.

OPINION OF FOREGOING SYNOPSIS

On March 5, 1940 you wrote the following letter:

"Because of the foreclosures of mortgages on properties, upon which the United States Government has loaned money, the Federal Government, through its various branches, has obtained in the past, and will presumably in the future continue to obtain, title to buildings in the city of Chicago.

"The Board of Health at its last meeting requested me to ask for an opinion on the right of the Board of Health to require the submission of plans and approval by the Board when such buildings are re-built or extensive alterations are made which would require building permits to be issued if the buildings were privately owned.

"Will you please, therefore, give the Board of Health an opinion on this matter?

"If your answer to the above mentioned question is in the affirmative, will you also please give the Board an opinion as to whether the customary fees required by ordinance for plan examination and approval and subsequent inspection of the premises, should be collected from the United States Government?

"In this connection, it may be noted that on some housing projects constructed by the Works Progress Administration and subsequently by the Chicago Housing Authority, using funds obtained from the Federal Government, the plans have been examined and approved by the Health Department with respect to plumbing, but no fees were collected by the city for this service."

The Home Owners Loan Corporation was created by authority of the Act of June 13, 1933, as amended, 12 U. S. C. A., Sec. 19461 *et seq.*, to engage in the business of loaning money and refinancing mortgages on real estate, a business that private corporations and individuals commonly engage in. The principal purpose of the Act, as was recited therein, was to provide emergency relief with respect to home mortgage indebtedness, to refinance home mortgages, and to extend relief to owners of home occupied by those who were unable to amortize their debts elsewhere. Profits were to be paid to the government which owned all of the stock.

Generally the instrumentalities of the United States government are immune from the powers of taxation and of the police power of the state. *People ex rel.* v. *United States of America,* 93 Ill. 30 (1879); *Fagan* v. *City of Chicago,* 84 Ill. 233 (1876); *Johnson* v. *Maryland,* 254 U. S. 51 (1920).

Is the Home Owners Loan Corporation such an instrumentality of government as to bring it within the foregoing rule? Federal agencies or instrumentalities do not acquire the government's immunity from suit merely because they do its work. *United States* v. *Lee,* 106 U. S. 196 (1882); *Sloan Shipyards Corp.* v. *United States Shipping Bd. Emergency Fleet Corporation,* 258 U. S. 549 (1922). Congress may, of course, endow a governmental corporation with the government's immunity. It may also waive such immunity and consent to suits against such corporation and make its property subject to taxation and generally subject to all of the liabilities of a private corporation. In this case has congress done so?

Congress has declared in the Act creating it that the Home Owners' Loan Corporation is an instrumentality of the United States and that its bonds are exempt, as to principal and interest, from federal and state taxation, except surtaxes, estate, inheritance and gift taxes. The corporation itself, including its franchise, its capital, reserves and surplus, and its loans and income, is likewise exempt from taxation; its real property is, however, subject to tax to the same extent as other real property. In thus making subject to state tax the real property of the corporation, which consists largely of the properties acquired by foreclosure, can it not be said that this property also is subject to the police regulation of the state applicable to all similar property? We think it is.

In *Pittman* v. *Home Owners Loan Corporation,* 175 Md. 512 (1938) it was held that H. O. L. C. was required to pay the recording fee for placing its mortgages of record, but was not subject to an additional tax of fifteen cents per one hundred dollars of such indebtedness provided by state law on each mortgage recorded. In discussing this the court, quoting the United States Supreme Court in *Federal Land Bank* v. *Grosland,* 261 U. S. 374 (1920) said:

> "Of course, the state is not bound to furnish its registry for nothing. It may charge a reasonable fee to meet the expense of the institution. But in this case the legislature has honestly distinguished between the fee and the additional requirement that it frankly recognizes as a tax."

We do not see much difference in principle in charging a fee for recording tax exempt mortgages of the corporation, and charging a permit or inspection fee where repairs or alterations are required in its buildings expressly made subject to taxation.

By the Constitution Congress is given power to regulate commerce among the states, but it has been held the Interstate Commerce Act passed under the constitutional authority does not preclude the states from enacting police regulations on this subject as long as such regulations do not impose an undue burden on interstate commerce.

In *Morris* v. *Duby,* 274 U. S. 134, 143 (1926) it was said:

> "In the absence of national legislation especially covering the subject of interstate commerce the state may rightfully prescribe uniform regulations adopted to promote safety upon its highways and the conservation of their use applicable alike to vehicles moving in interstate commerce and those of its own citizens." (Citing *Hendrick* v. *Maryland,* 235 U. S. 610 (1914); *Kane* v. *New Jersey,* 242 U. S. 160 (1916).)

A small license fee imposed by a city on a telegraph company for the privilege of doing intrastate business is not to be declared an unconstitutional burden on its interstate business merely because the local business is unprofitable. *Postal Telegraph Cable Co.* v. *City of Fremont,* 255 U. S. 124 (1920).

An ordinance of a borough, imposing an annual license fee of one dollar per pole and two dollars and a half per mile of wire on the telegraph, telephone and electric light poles within the limits of the borough is not a tax on the property of the telegraph company owning the poles and wires, or on its transmission of messages or on its receipts for such transmission, but is a charge in the enforcement of local government supervision and as such is not in itself obnoxious to the commerce clause of the federal constitution. *Western Union Telegraph Co.* v. *Borough of New Hope,* 187 U. S. 419 (1902).

A municipal charge for the use of the streets of the municipality by a telegraph company, erecting its poles therein is not a privilege or license tax. *St. Louis* v. *Western Union Tel. Co.,* 148 U. S. 92 (1892).

In *Barret* v. *City of New York,* 183 Fed. 793 (1910) it was held that the fact that the delivery wagons of express companies operating in New York and using the public streets were engaged in interstate commerce did not make them immune from the operation of general ordinances adopted under Greater New York Charter granting to board of aldermen power to regulate the use of the streets for animals, vehicles, etc. and to make such regulations with reference to the running of stages, trucks and cars as might be necessary for the convenient use and accommodation of the streets.

If interstate commerce which the states may not burden or interfere with may lawfully be subject to the police regulations of the state, we can see no valid reason why the police regulations of the state should not apply to the real property of the corporation which Congress has expressly made subject to taxation. If inspection fees were levied for revenue purposes these properties would be subject to the tax, but as they are merely a nominal charge based on the cost of local government supervision can it be said these properties are immune from their payment?

In subjecting such property to taxation Congress impliedly has admitted that such a tax does not deprive the Corporation of the power to serve the government as it was intended to serve it, or hinder the efficient exercise of its power. If the imposition of such a tax does not interfere with, or impair the efficiency of the corporation in performing the functions by which they are designed to serve the government, certainly a nominal inspection fee charged for local supervision of such property could not have the opposite effect.

It is our opinion, therefore, that real property of the Home Owners Loan Corporation is subject to the police regulations of the city and liable to the payment of the permit inspection fees which attach to the enforcement of these regulations.

The reason that in the case of the Chicago Housing Authority referred to in the last paragraph of your letter, plans were examined with respect to plumbing and no fees collected, is that by contract between the city of Chicago and the Chicago Housing Authority these fees were expressly waived.

CITY'S LIABILITY UNDER WPA FORM 301 AND SUPPLEMENT

(No. 10334—Commissioner of Public Works—J. F. G.—August 15, 1940.)

The additional certificate to sponsor's agreement, WPA form No. 301, providing that the city shall supply all materials not supplied from federal funds and all labor not available from certified relief rolls and to prosecute the project to completion to the extent of usable units thereof commenced and as city appropriations become available for such purpose, meets the requirements of the Emergency Relief Appropriation act of 1939. This certificate tends to limit city's contingent liability as compared with the previously executed sponsor's certificate, form No. 301.

Authority of the commissioner of public works to prosecute a WPA project is authority to execute an agreement for the prosecution of such project to the extent of available appropriations therefor.

Citations: Work Relief and Public Works Appropriation act, sec. 5 (1938).
Emergency Relief Appropriation act, secs. 10(c), 11, 12 (1939).

SPONSOR'S LABOR CONTRIBUTION TO WPA PROJECT

(No. 10335—Commissioner of Public Works—J. F. G.—August 16, 1940.)

The commissioner of public works should not certify as part of the sponsor's contribution a portion of salaries paid to employees appointed for a fixed term or pursuant to the civil service law until the head of the Federal Works Agency approves such allowance of credit.

Citation: Emergency Relief Appropriation act, sec. 10(c) (1941).

HONORING OF SUBSEQUENT EASEMENT FOR WATERWAYS

(No. 10485—Commissioner of Public Works—C. B. C.—May 21, 1941.)

The city is under no legal duty to pay grantors a sum stipulated in an easement agreement of 1940 for waterway purposes to the United States, since a prior easement agreement granted the United States a perpetual right of way for waterway purposes and the United States had accepted the easement by taking possession of the land and constructing a waterway channel.

Citations: McNichols v. McNichols, 299 Ill. 362 (1922).
Roane v. Baker, 120 Ill. 308 (1887).
Calligan v. Calligan, 259 Ill. 52 (1913).

INCREASE IN DIVERSION FROM LAKE MICHIGAN

(No. 10590A.—Mayor—J. F. G.—January 27, 1942.)

The War Department is powerless to act in the matter of any proposed increase in the diversion of water from Lake Michigan in the interest of navigation and prevention or abatement of pollution. That power is vested in the Congress of the United States which has specifically reserved to itself the prerogative of determining the amount of water which may be diverted from the Great Lakes for the Illinois waterway.

Citations:
Statute: U. S. 71st Cong., Sess. II, Part 1, p. 929.
Case: Wisconsin v. Illinois, 278 U. S. 367.

OPINION OF FOREGOING SYNOPSIS

We have examined correspondence between you and the Secretary of War relating to the above subject prompted by the fact that the increase in pollution of Lake Michigan due to war industrial activities in the Calumet region of Indiana and Illinois has become a menace to the health of the people of Chicago which can be relieved only by an increase in diversion of water from Lake Michigan through the Sanitary Canal.

The Secretary of War in his reply of January 9, 1942 to your letter of December 27, 1941 stated that the War Department is unable to take any action with regard to your proposal because of the decree of the Supreme Court of the United States dated April 21, 1930 (281 U. S. 696) which enjoined the State of Illinois and The Sanitary District of Chicago from diverting more than 1500 cubic feet per second of the waters of the Great Lakes through the Chicago Drainage Canal after December 31, 1938.

We have examined the decision of the Supreme Court referred to, as well as the decision in the case of *Wisconsin* v. *Illinois* reported in 978 U. S. 367 and a report on the diversion of water from Lake Michigan at Chicago by H. P. Ramey, Assistant Chief Engineer of The Sanitary District of Chicago, dated January 5, 1942, and we are of the opinion that in the light of the law and the facts disclosed the Secretary of War was justified in stating that he is powerless in the matter.

The control of navigable waters of the United States is primarily in the Congress of the United States which may delegate to an executive department of the government authority to regulate the flow so as to promote the broad objective of maintaining their use for navigation.

In the case of *Wisconsin* v. *Illinois* Mr. Justice Taft, in construing the Act of Congress delegating powers to the Secretary of War, said that the Secretary of War in the interest of navigation and its protection might permit a sufficient diversion of the waters of Lake Michigan to avoid interference with navigation in the port of Chicago but could not make mere local sanitation a basis for a continuing diversion.

In the light of this pronouncement and after hearing evidence upon the subject the Supreme Court, speaking through Mr. Justice Holmes, in the later case of *Wisconsin* v. *Illinois* determined that diversion of 1600 cubic feet of water per second in addition to domestic pumpage was

sufficient to avoid interference with navigation and the pollution of the navigable waters in the port of Chicago after the sewage treatment program of the Sanitary District recommended at the time had been carried out.

We do not conclude from the decisions of the Supreme Court that its judgment as to the amount of water which may be diverted from the Great Lakes is conclusive under all circumstances which may have arisen since these decisions were rendered and we have no doubt that notwithstanding these decisions the Congress of the United States has power to relieve the conditions in the port of Chicago in the interest of navigation and prevention or abatement of pollution, and also that the Congress would have power to delegate to the Secretary of War the authority to increase or decrease the amount of water diversion as the exigencies of navigation require. The Congress itself has not taken any action in that direction nor has it delegated to the Secretary of War the power to act in this respect. On the contrary, the last Act of Congress governing the subject was the Rivers and Harbors Act of July 3, 1930 authorizing improvement of the Illinois River which provided (St. of U. S., 71st Cong., Sess. II, Part 1, p. 929):

> "* * * That the water authorized at Lockport, Illinois, by the decree of the Supreme Court of the United States, rendered April 21, 1930, and reported in volume 281, United States Reports, in Cases Numbered 7, 11 and 12, Original—October term, 1929, of Wisconsin and others against Illinois, and others, and Michigan against Illinois and others, and New York against Illinois and others, according to the opinion of the court in the cases reported as Wisconsin against Illinois, in volume 981, United States, page 179, is hereby authorized to be used for the navigation of said waterway: Provided further, That as soon as practicable after the Illinois waterway shall have been completed in accordance with this Act, the Secretary of War shall cause a study of the amount of water that will be required as an annual average flow to meet the needs of a commercially useful waterway as defined in said Senate document (Senate Document No. 126, Seventy-first Congress, Sess. II), and shall, on or before January 31, 1938, report to the Congress the results of such study with his recommendations as to the minimum amount of such flow that will be required annually to meet the needs of such waterway and that will not substantially injure the existing navigation on the Great Lakes to the end that Congress may take such action as it may deem advisable."

It is clear from the foregoing that the Congress specifically reserved to itself the prerogative of determining the amount of water which may be authorized to be diverted from the Great Lakes for the Illinois waterway after considering the report of the Secretary of War upon the subject.

In this connection your attention is respectfully directed to the agreement pertaining to the St. Lawrence River which has been executed by the respective plenipotentiaries of the governments of the United States and of Canada, subject to the approval of the Congress of the United States and the Parliament of Canada. Article VIII (e) of that agreement freezes the amount of water that may be diverted from the Great Lakes System to the quantity permitted in either of the countries on January 1, 1940 and prohibits any increase in the diversion by either government without the consent of the other, excepting upon terms of arbitration. The approval of this agreement by the Congress appears to be incorporated in the Rivers and Harbors Bill pending in the House of Representatives as H. R. 5993.

APPLICATION TO POLICE DEPARTMENT OF FEDERAL LAW REGULATING HANDLING OF EXPLOSIVES

(No. 10652—Commissioner of Police—F. V. M.—June 18, 1942.)

The federal law which requires persons who manufacture, distribute, store, sell, issue, give or otherwise dispose of explosives or ingredients to obtain licenses, applies to the police department.

Citation: H. R. 3019 (U. S. Public Law 381—77th Congress).

OWNERSHIP DESIGNATION ON U. S. TRUCKS

(No. 10655—Commissioner of Police—J. H. S.—June 23, 1942.)

U. S. Government owned vehicles are not subject to the ordinance which requires that trucks bear the name and address of the owner.

Citation: Mun. Code: 29-14, 29-15.

JURISDICTION OVER BUILDINGS ERECTED BY DEFENSE PLANT CORPORATION AND LEASED TO PRIVATE CONCERNS

(No. 10678—Commissioner of Buildings—H. R. P.—August 20, 1942.)

The city has no jurisdiction over building construction, issuance of building permits or collection of building permit or inspection fees of buildings constructed by the Defense Plant Corporation, the War Department or the Navy Department to be occupied under lease by private concerns for the manufacture of war materials, as long as the U. S. government remains the owner of the property.

Citations:
Constitution: Art. I, Sec. 8.
Statute: IRS '41, 143: 29, 30, 31.
Reconstruction Finance Corporation Act, 15 U. S. Code, Sec. 606B.
Other references: 19 Op. Corp. Coun., p. 300 (No. 9090); p. 296 (No. 9194).

NOTE: Compare this and former opinions on the subject with opinion of J. F. G. to the Finance Committee, dated March 1, 1943, and subsequent opinions.

MUNICIPAL JURISDICTION OVER DEFENSE PLANTS.

(No. 10689—Superintendent of Sewers—M. H. F.—September 24, 1942.)

City license and permit fees are required in cases of defense plants financed by Defense Plant Corporation but operated as private prop-

erty. Only in the case where the federal government has acquired lands within the limits of a state by purchase, with the consent of the legislature of the state, for the erection of federal buildings and other installations, is exclusive jurisdiction ceded to the United States.

Citations:
Case: Ft. Leavenworth R. R. Co. v. Lowe, 114 U. S. 525 (1885).
Other reference: 18 Op. Corp. Coun., p. 5 (No. 7070); p. 381 (No. 7240).

NOTE: Compare this and former opinions on the subject with opinion of J. F. G. to the Finance Committee, dated March 1, 1943, and subsequent opinions.

MUNICIPAL INSPECTION OF PROPERTY LEASED BY U. S. GOVERNMENT FOR ARMY SIGNAL CORP

(No. 10723—Board of Health—M. H. F.—December 15, 1942.)

The International Amphitheater, owned by the Union Stock Yard & Transit Company and leased to the U. S. Army Signal Corps under a lease which gives the Signal Corp exclusive occupancy and places upon the Signal Corps the obligation of maintaining the building, is subject to municipal inspection of mechanical ventilating equipment and the imposition of a fee therefor.

Where both the land and the building remain the property of private interests, only leased to the federal government, full jurisdiction has been reserved to the state and the city in the matter of inspections and the collection of fees therefor.

Citations:
Constitution: Art. I, Sec. 8, Clause 17 (U. S.).
Statute: IRS '41, 143: 29, 30, 31.
Ordinance: Mun. Code: 46-40, 46-41.
Case: Ft. Leavenworth R. R. Co. v. Lowe, 114 U. S. 525 (1885).

O.P.A. FUEL OIL REGULATIONS AS AFFECTING MUNICIPAL HEATING REQUIREMENTS

(No. 10726—Chairman of Special Committee—A. F. G.—December 17, 1942.)

For the duration of the war, O.P.A. fuel oil regulations incompatible with heating requirement provisions of the municipal code override code provisions.

Citations:
Ordinance: Mun. Code: 96-4.
Other reference: O.P.A. Fuel Oil Rationing Regulations. Ration Order No. 11; Sec. 1394.5459.

FEDERAL INCOME TAX AS AFFECTING DONATIONS TO SERVICE MEN'S CENTER

(No. 10729—N. N. E.—December 21, 1942.)

Contributions made to the Chicago Service Men's Center are deductible for federal income tax purposes.

INSPECTION OF PRIVATE ARMAMENT PLANT FINANCED BY FEDERAL FUNDS

(No. 10608—Commissioner of Streets and Electricity—M. H. F.—February 26, 1942.)

Only when the federal government has acquired lands within the limits of a state by purchase, with the consent of the legislature of the state, for the erection of federal buildings and other installations, is exclusive jurisdiction ceded to the United States.

Private property, although financed by a federal agency as part of an armament program, is still subject to municipal regulation and inspection.

Citations:
Statute: IRS '41, 143.
Case: Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525 (1885).
Other references: 18 Op. Corp. Coun., p. 5 (No. 7070).
18 Op. Corp. Coun., p. 381 (No. 7240).

NOTE: Compare this and former opinions on the same subject with opinion of J. F. G. to Finance Committee dated March 1, 1943 and subsequent opinions.

C. RELATIONSHIPS WITH OTHER GOVERNMENTS

LIQUOR BAR PERMITS FOR BROOKFIELD LEASED PROPERTY

(No. 10264—Commissioner of Public Works—M. H. F.—May 2, 1940.)

The Village of Brookfield has no legal right to issue bar permits for premises owned by the City of Chicago and leased to the village for park purposes. Regulation of the sale of alcoholic liquor on premises outside the City of Chicago under the State Liquor Control act is vested in the Illinois liquor control commission.

Citations:
Statute: State Liquor Control law, art. V, art. VI, secs. (11), (13), (14).
Other reference: 18 Op. Corp. Coun. 487 (No. 8843).

MARKING ANGLES ON STREET CONTROLLED BY PARK DISTRICT

(No. 10383—Commissioner of Public Works—H. R. P.—December 9, 1940.)

Under an ordinance granting consent to the Chicago Park District to improve, maintain and govern the upper level of part of N. Michigan avenue, reserving only the right to construct and maintain all present and future municipally owned or controlled utilities located underground and street openings therefor, the city should secure the permission of the Chicago Park District to mark angles of first Fort Dearborn on sidewalk at the intersection of N. Michigan avenue and E. Wacker drive.

Citation: Coun. J. (1935-36), pp. 866, 997.

REMOVAL OF CURBING ON STATE ROAD

(No. 10406—Commissioner of Public Works—R. J. N.—January 17, 1941.)

As Peterson avenue is an extension of a state bond issue route, the Illinois department of public works and buildings had authority to construct a center line barrier curbing which compels vehicles entering upon the highway to make a right hand turn rather than to proceed directly across the highway. Therefore, the commissioner of public works would have no authority to remove any portion of the curb without permission of the state agency even though the city council has approved such removal.

Citations:
Statutes: IRS '39, 95½: 126.
IRS '39, 121: 291 to 307.
Cases: City of Geneseo v. Illinois Northern Utilities Co., 363 Ill. 89 (1936).
Calumet Federal Savings and Loan Association v. City of Chicago, 306 Ill. App. 524 (1940).

LIABILITY OF CITY IN CONSTRUCTING BEVERLY-CALUMET SEWER

(No. 10438—Commissioner of Public Works—D. L. L.—March 17, 1941.)

Under terms of the easement agreement with the village of Calumet Park authorizing the city to construct a sewer through the village, provided the city indemnify the village for any liability therefor, the city is not liable for any alleged damage resulting to property

owners in that vicinity from the drying up of wells as a result of the construction of the Beverly-Calumet sewer, since no liability has or will attach to the village by reason of the construction of this sewer.

Citations:
Cases: Flanigan v. State, 183 NYS 934 (1920).
Madison v. Rapid City, 246 NW (So. Dak.) 283 (1932).
Couch v. Clinchfield Coal Corp., 139 SE (Va.) 314 (1927).
Jones v. Forest Oil Co., 44 Atl. 1074, 48 LRA 748 (1900).
People's Gas Co. v. Tynes, 31 NE (Ind.) 59 (1892).
Davis v. Spaulding, 32 NE (Mass.) 650 (1892).
Other reference: Agreement between the City of Chicago and the Village of Calumet Park, par. C, sec. 4 (January 4, 1939).

OPINION OF FOREGOING SYNOPSIS

We have your letter of October 29, 1940, requesting our opinion as to the liability of the city of Chicago to the Village of Calumet Park by virtue of the construction of the Beverly-Calumet sewer through the village on the line of Laflin street.

In your letter you advise us that the city was authorized to construct a sewer through the village by an easement agreement approved by the city council on January 4, 1939. Paragraph C of section 4 of the agreement states as follows:

> "The city shall indemnify and hold harmless said Village from any and all claims for damages to real and personal property, injuries to or death suffered by any person or persons by reason of the performance by the city of its said work described herein."

It is the contention of the Village of Calumet Park that damages were caused to the various property owners by the drying of the wells in that vicinity, allegedly caused by the construction of this sewer.

Under the easement agreement heretofore executed by the village of Calumet Park to the city of Chicago the indemnification clause therein contained provides that the city of Chicago will hold the village harmless for all damages. Before the city of Chicago can be called upon to pay any damages it must be established first that the village of Calumet Park is liable in the instant claim. The indemnification clause does not compel the city of Chicago to assume liability simply because a claim has been made, but it must be definitely shown that a liability would exist against the village of Calumet Park.

In *Flanigan* v. *State,* 183 N. Y. S. 934 (1920), the claimant in that case filed a claim against the State of New York alleging damages by the destruction of two wells on her property allegedly caused when the state constructed its canal adjoining her property. The claimant's contention was that the construction of the canal lowered the water table to such an extent that it withdrew the source of supply of such water for the wells of the claimant and destroyed their usefulness. The court in discussing that case took the position that the state would be liable in the same instance as an adjoining property owner, and in its opinion stated the rule to be (p. 939):

> "If a landowner had dug a trench or cellar, quarried stone, or carried on mining operations on his own land, and thereby destroyed or cut off subterranean or subsurface waters supplying his neigh-

bor's well, no legal liability would thereby be created against such adjoining landowner, and on the same principle, when the state dug through its land for the purpose of constructing a canal, even if in so doing it cut off the underground water that supplied the claimant's well, no action will lie against it."

Madison v. *Rapid City,* 246 N. W. 283 (So. Dak. 1932), was an action for an injunction against Rapid City to restrain the continuing alleged diversion of water which was causing a spring on plaintiff's property to become dry. The lower court sustained a demurrer to the complaint and on appeal the order was reversed. In reversing this case the court stated that there were no allegations in the complaint that the spring on the plaintiff's property was a spring from which a certain creek commenced its course, then the cause would not be reversed. The court held, however, that the interception of subterranean waters by the city, through the digging of trenches on land adjacent to plaintiff's property which caused the spring to disappear, gave no cause of action and followed the general rule regarding subterranean waters.

In *Couch* v. *Clinchfield Coal Corp.,* 139 S. E. 314 (Va. 1927), the court held that "One owning land cannot recover for injuries to his wells or springs resulting from the lawful exercise of rights of an adjoining owner in his own property," and cited in support thereof *Jones* v. *Forest Oil Co.,* 44 A. 1074, 48 L. R. A. 748. The court also in that case quoted and cited in support thereof the rule laid down in *People's Gas Co.* v. *Tynes,* 31 N. E. 59 (Ind.) and *Davis* v. *Spaulding,* 32 N. E. 650 (Mass.) as follows:

> "An owner of a tract of land may sink a well, and appropriate to his own use all the percolating water found therein, although it may entirely destroy the well on his neighbor's land."

We are of the opinion that the city of Chicago, under the terms of this indemnifying agreement, is not liable as a result of the construction of the Beverly-Calumet sewer for any alleged damage resulting to property owners in that vicinity from the drying up of wells, since no liability has or will attach to the village of Calumet Park by reason of the construction of this sewer.

JURISDICTION OF PARK DISTRICT OVER 47TH STREET

(No. 10441—Commissioner of Public Works—C. B. C.—March 21, 1941.)

The Chicago Park District has no jurisdiction over that portion of E. 47th street which lies between Kenwood avenue and Erickson drive, and therefore it cannot change the name of this portion of the street. However, the park district has jurisdiction of that part of E. 47th street east of a point where E. 47th street intersects the original lake water line of Lake Michigan, a point which is approximately 800 feet east of S. Kenwood avenue.

Citation: Coun. J. (1919-20), p. 974, par. D, secs. 6, 18 (Lake Front ordinance).

REPAIR OF VIADUCT OF PARK DISTRICT STREET

(No. 10459—Commissioner of Public Works—C. B. C.—April 18, 1941.)

The passage of an ordinance which transferred the upper level of N. Michigan avenue, within described boundaries, to the Chicago Park District, and the acceptance of the same by the park district, requires the park district to make all necessary repairs in connection with a viaduct supporting this street area. The city retains the duty to repair only in reference to municipally owned utilities and improvements within the boundaries of this territory.

Citations:
Ordinance: Coun. J. (1935-36), p. 866.
Case: City of Chicago v. P.C.C. & St. L. RR. Co., 146 Ill. App. 403 (1909).
Other reference: Chicago Park District resolution accepting N. Michigan avenue area, passed Dec. 18, 1935.

RELEASE OF ARRESTED PERSONS

(No. 10489—Commissioner of Police—C. P. H.—June 6, 1941.)

A judge of the Municipal Court has authority to order the police to bring before him persons under arrest against whom no formal complaints have been filed, and release them upon the signing of their individual bonds.

Citations:
Statute: Municipal Court act, secs. 17, 50.
Other reference: Municipal Court rule 12.

MAINTENANCE OF N. MICHIGAN AVENUE

(No. 10492—Commissioner of Public Works—C. B. C.—June 12, 1941.)

It is the duty of the Chicago Park District to maintain only the boulevard surface, islands and sidewalks of the upper level of N. Michigan avenue between the north line of Ohio street and the north line of the bridge across the Chicago river. It is the duty of the city, however, to maintain the drains and sidewalk railings of this area.

Citations: Coun. J. (1923-24), pp. 690, 691, 881 to 883.

LIABILITY FOR BRIDGE CONSTRUCTED BY SANITARY DISTRICT

(No. 10552—Commissioner of Public Works—D. D. K.—October 29, 1941.)

The city would be liable for damages caused by the defective condition of a bridge and viaduct within its territorial limits as long as the city holds out this section to be a public highway and invites the public to use it as such. This liability would not be affected by the facts that the sanitary district had constructed the bridge and the city had never formally accepted the bridge and viaduct.

Citations:

Statute: IRS '41, 42: 320, 337.
Ill. Stat. Ann., 42: 352.

Ordinances: Coun. J. (1925-6), p. 1039.
Coun. J. (1928-9), p. 3077.

Cases: Village of Marseilles v. Howland, 124 Ill. 547 (1888).
Lawrence v. Village of Channahon, 157 Ill. App. 560 (1910).
Lussem v. Sanitary District, 192 Ill. 404 (1901).
O'Connell v. Chicago & N. W. R. R. Co., 305 Ill. App. 430 (1940).
Linneen v. City of Chicago, 310 Ill. App. 274 (1941).

Opinion No. 10629 of April 20, 1942 to the Committee on Finance, by H. M. A., and Opinion No. 10635 of April 29, 1942 to the Committee on Finance, by D. D. K., hold substantially the same as the above opinion.

COST OF MAILING CONSTITUTIONAL AMENDMENT PAMPHLETS

(No. 10559—Committee on Finance—A. F. G.—November 12, 1941.)

The city is legally chargeable with all proper expenses incurred by the board of election commissioners in mailing to electors pamphlets discussing a proposed constitutional amendment, which pamphlets are furnished by the secretary of state.

Citations:

Statutes: IRS '41, 7½: 2.
IRS '41, 46: 277 (City Election Law).

TITLE TO CALUMET RIVER BED

(No. 10584—Commissioner of Public Works—D. H. N.—January 16, 1942.)

Plats and surveys of the Calumet River and its connecting slips should show abutting lot lines as terminating at the river banks.

The Calumet River and its connecting slips are navigable waters and title to all underlying lands is vested in the state.

Citations:
Cases: City of Chicago v. C. B. & Q. Ry., 319 Ill. 251 (1925).
Dupue Rod & Gun Club v. Marliere, 332 Ill. 322 (1928).
Wilton v. Van Hessen, 249 Ill. 182 (1911).
Dupont v. Miller et al., 310 Ill. 140 (1923).
Other reference: 45 Corpus Juris, p. 538, sec. 212.

OPINION OF FOREGOING SYNOPSIS

Reference is made to your letter of June 11, 1941, wherein you state that the Chicago Guaranty Survey Company has presented a plat of consolidation "Subdivision" to the examiner of subdivisions for approval, showing lots extending into the Calumet River just north of 106th street, also showing a lot number for part of South Chicago Dock Company's Slip No. 4. A sketch of the property in question has likewise been received and carefully studied.

It is a well established fact that the Calumet River and all its slips are navigable waters and that title to all lands underlying navigable waters became vested in the state of Illinois upon its admission to the Union. *City of Chicago* v. *C. B. & Q. Ry.,* 329 Ill. 251 (1925); *Depue Rod & Gun Club* v. *Marliere,* 332 Ill. 322 (1928); *Wilton, et al.* v. *Hessen, et al.,* 249 Ill. 182 (1911); *Dupont* v. *Miller, et al.,* 310 Ill. 140 (1923); 45 C. J. 538, sec. 212. It is a well settled law that a riparian owner's title to any land underlying navigable waters is a qualified one, being subject to the public easement of navigation. *Leitch, et al.* v. *Sanitary District of Chicago,* 369 Ill. 469 (1938); *People* v. *Economy Light & Power Co.,* 241 Ill. 290 (1909); 45 C. J. 544, sec. 217.

It appears in the instant situation that the former owners of the property in question agreed to the establishment of a new dock line, as set forth in the ordinance of December 3, 1917 (C. J., p. 1603), and indicated in the sketch enclosed in your communication.

Although certain conditions subsequent in the aforesaid ordinance appear not to have been complied with, the new dock line became a reality by reason of a common law dedication rather than a statutory dedication, there being no dispute as to the clear, unequivocal and satisfactory proof of the former owner's intention to dedicate, and the acceptance of same by the city. (*Leonard* v. *Pearce,* 348 Ill. 518 at p. 526, June, 1932; *Kennedy* v. *Town of Normal,* 359 Ill. 306 at p. 309, February, 1935.) Accordingly the present owners acquired title to their property charged with knowledge of the existant dedication, and also with the fact that the new dock line had been established and in use, as more fully set forth in the ordinance of December 3, 1917, herein cited.

We are of the opinion that inasmuch as the Calumet River and its connecting slips are navigable waters, abutting lot lines should be shown on all plats and surveys as terminating at the banks of the same and not extending into the waters.

Chapter 115, section 13, Illinois Revised Statutes 1941, referred to in your communication as Senate Bill 414, was enacted into law in its amended form and approved on July 18, 1941, and is now in effect. It provides *inter alia* as follows:

> "It shall be unlawful for any recorder * * * to record any sub-division plat of any lands bordering on or including any public waters of the State in which the State of Illinois has any property rights or property interests, unless such sub-division plat is approved by the Department of Public Works and Buildings. * * *"

WIDTH OF STREETS PAVED AS M. F. T. PROJECTS

(No. 10609—Committee on Finance—J. F. G.—February 26, 1942.)

Control of width of streets paved as motor fuel tax fund projects, including vehicular roadways and sidewalks, is in the state authorities.

Citations:

Statutes: Revised Cities and Villages Act, secs. 23-8, 23-10, 23-18, 23-20, 23-27, 23-29, 87-1.
IRS '41, 121: 1(b), 292, 296, 296a.
Laws of Illinois, 1941, vol. 1. pp. 1063, 1065.
Motor Fuel Tax Law, sec. 10½.

Case: Department of Public Works v. Ryan, 357 Ill. 150 (1934).

LABORATORY CULTURES AT STATE OPERATED LABORATORY

(No. 10641—President, Board of Health—F. V. M.—May 26, 1942.)

The operation of the state department of public health laboratory is not subject to the rules and regulations of the Chicago board of health.

FEDERAL LOANS OR GRANTS TO MEDICAL CENTER COMMISSION

(No. 10642—Medical Center Commission—F. V. M.—May 26, 1942.)

The R.F.C. is authorized to make loans to the Medical Center Commission. The F.W.A. is authorized to make loans or grants to the commission.

Citations:

Statutes: IRS '41, 91: 129, 128 (Medical Center District act).
USCA Title 15, chap. 14, sec. 605b.
USCA Title 42, sub-chap. III, secs. 1531, 1532.

DIVIDING WALL BETWEEN HOUSE OF CORRECTION AND COUNTY JAIL

(No. 10645—House of Correction—E. R. H.—June 5, 1942.)

The wall which divides the House of Correction property and the County Jail property is not a party wall. It is on city property and the county cannot be compelled to contribute toward its repair.

REPAIR OF SANITARY DISTRICT BRIDGES

(No. 10665—Committee on Finance—H. M. A.—July 15, 1942.)

In order to obviate tort liability the city may find it necessary to repair and maintain bridges located within its territorial limits to

the extent that such bridges shall be in reasonably safe condition for public travel. If the city does not desire to so repair and maintain such bridges, it should close them to public travel. Bridges used as parts of public highways place upon the city the same obligation as to their condition as is imposed for streets and highways.

The necessity for making such repairs, however, does not indicate that the city is liable for the expenditure involved. Ultimate financial responsibility and the procedure to enforce it depend on the circumstances of each individual case.

Citations:

Statute: IRS '41, 42: 337, 352.
Ill. Const. 1870, Art. IX; 9, 10.

Cases: Linneen et al. v. City of Chicago, 310 Ill. App. 274 (1941).
Village of Marseilles v. Howland, 124 Ill. 547 (1888).
Lawrence v. Village of Channohan, 157 Ill. App. 560 (1910).
City of Bloomington v. Bay, 42 Ill. 503 (1867).
City of Chicago v. Johnson, 53 Ill. 91 (1869).
City of Decatur v. Fisher, 53 Ill. 407 (1870).
Sterling v. Thomas, 60 Ill. 264 (1871).
Meusig v. Harz, 283 Ill. App. 115 (1935).
People v. Block, 276 Ill. 286 (1916).
Brougher v. Lost Creek Drainage Dist., 277 Ill. 156 (1917).
People v. Hedges. 289 Ill. 378 (1919).
Sanitary Dist. v. C. & A. R. R. Co., 267 Ill. 252 (1915).
E. Side Dist. v. M. & O. R. R. Co., 279 Ill. 319 (1917).

OPINION OF FOREGOING SYNOPSIS

This acknowledges receipt of your recent communication inquiring as to the liability of the Sanitary District of Chicago for the maintenance and repair of bridges constructed by the Sanitary District over its main channel and the North Shore Channel. Your communication refers to an opinion of this office, dated April 29, 1942, advising that the city of Chicago must keep the Bryn Mawr avenue bridge reasonably safe for public travel if that bridge is held open for public use. You also discuss our opinion dated April 20, 1942, defining the city's liability for the repair and maintenance of the Kedzie avenue bridge. It is apparent that some confusion has arisen as a result of conflicting inquiries with respect to various bridges.

Because of the nature of the communications received by this office regarding these bridges it has not always been necessary to distinguish between the financial obligation, on the one hand, for repairing and maintaining bridges constructed by the Sanitary District, and the necessity, on the other hand, of the city to keep bridges used as parts of public highways in a reasonably safe condition for public travel. This distinction should now be made clear.

The opinions of this office have uniformly held that in order to obviate tort liability the city of Chicago may find it necessary to repair and maintain bridges located within the territorial limits of the municipality to the extent that such bridges shall be in reasonably safe condition for public travel. If the city does not desire to so repair and so maintain these bridges, the only alternative is to close them to public travel. Bridges used as parts of public highways clearly place upon the city the

same obligation as to their condition as is imposed for streets and highways situated within the city. *Linneen, et al.* v. *City of Chicago,* 310 Ill. App. 274 (1941); *Village of Marseilles* v. *Howland,* 23 Ill. App. 101, affirmed 124 Ill. 547 (1888); *Lawrence* v. *Village of Channahon,* 157 Ill. App. 560 (1910); *O'Connell* v. *Chicago & N. W. R. Co.,* 315 Ill. App. 430 (1940).

The necessity for making such repairs, however, does not indicate that the city is liable for the expeditures involved. If the obligation to repair and maintain legally is that of the Sanitary District, the city may ultimately recover the cost of such expenditures from the Sanitary District, and conceivably, where the necessity for immediate action is not imperative, might compel by appropriate proceedings the Sanitary District to make such repairs. Eliminating the element presented by the city's tort liability, arising as a result of bridges in a dangerous condition, this opinion treats only the question of ultimate financial responsibility.

Section 337, chapter 42, of the Illinois Revised Statutes of 1941, authorizes the Sanitary District to construct bridges across its main channel, together with necessary approaches at Crawford avenue, California avenue, Cicero avenue and Harlem avenue, and provides that such of those bridges as are located within the territorial limits of the city shall, upon their completion, be thereafter maintained and repaired by the city of Chicago. In our opinion of April 20, 1942, we interpreted this section as specifically imposing liability on the city for repairs and maintenance only as to the bridges therein designated. It should be pointed out, however, that there is no judicial decision directly corroborating this interpretation. Our opinion is based upon the context of the statute and what is submitted to be the clear import of the language used. This does not, however, remove the possibility of a judicial contest on this interpretation.

Section 352, chapter 42, of the Illinois Revised Statutes of 1941, empowers the Sanitary District to construct bridges rendered necessary by reason of the widening, deepening or improving of a navigable stream or river used as a portion of the Sanitary District's channel. Section 353 of the same chapter provides that any bridge thus built which replaces an existing public street or highway bridge shall, after the construction of such bridge, be operated and controlled by the municipality within which it is located. Although this section does not specifically provide for maintenance and repair by the city of bridges which the Sanitary District is thereby empowered to construct, this result nevertheless follows. The obligation to repair and maintain streets and sidewalks is co-existent with the right to control such streets and sidewalks. Our courts have consistently followed this rule. *City of Bloomington* v. *Bay,* 42 Ill. 503 (1867); *City of Chicago* v. *Johnson,* 53 Ill. 91 (1869); *City of Decatur* v. *Fisher,* 53 Ill. 407 (1870); *Sterling* v. *Thomas,* 60 Ill. 264 (1871); *Muesig* v. *Harz,* 283 Ill. App. 115 (1935). By analogy to these cases, the corollary becomes evident that the city would be obliged to repair and maintain bridges which it operated and controlled.

It should not be overlooked, however, that in the event of litigation the city might well contend that these two statutory provisions are unconstitutional insofar as a liability for repair and maintenance is attempted to be imposed upon the city. Sections 9 and 10, article IX, of the Illinois Constitution of 1870 provide that municipal corporations may be vested with the authority to assess and collect taxes for corporate purposes, and that the General Assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes. It has been held that these sections prohibit the legislature from compelling a municipality to incur a debt for corporate purposes without its consent and from granting the right of corporate taxa-

tion to any other than the corporate authorities. *People* v. *Block,* 276 Ill. 286 (1916); *Brougher* v. *Lost Creek Drainage District,* 277 Ill. 136 (1917).

These last two cases arose under an act passed by the legislature requiring town authorities to replace highway bridges removed or destroyed by drainage commissioners in the construction of drainage ditches at the sites of natural water courses. The court held this statutory requirement unconstitutional, and in the *Block* case said, at pages 290 and 291:

> "The destruction of a part of the highway, requiring its repair, the cost of which can be met only by taxation of the town, is not different in character whether the place of such destruction is at a natural water-course or not. Such destruction necessarily imposes a burden on the town and cannot be authorized by the legislature at the cost of the town against its will. While the destruction of the road is not the levying of a tax, the law which attempts to authorize it imposes an obligation on the town against its will, which the constitution prohibits. * * * While the drainage commissioners are not authorized by section 55 to construct the bridges in public highways at the cost of the town, that section purports to authorize them to remove such bridges if in their judgment they find it necessary, and thus indirectly impose upon the township the cost of their replacement. The legislature is without power to do this."

We recognize that this decision is concerned only with the cost of construction and not with expenses for repair and maintenance. But other decisions compelling sanitary and drainage districts to construct bridges necessitated by their channels have included costs of maintenance. In *People* v. *Hedges,* 289 Ill. 378 (1919), a mandamus proceeding in which a drainage district was compelled to construct a bridge where its drainage ditch crossed the public highway, the court said, at page 382:

> "Lastly, it is contended the court erred in ordering that appellants maintain the bridge. We understand the judgment in this respect was in accordance with the law."

In *Sanitary District* v. *C. & A. R. R. Co.,* 267 Ill. 252 (1915), the court included the capitalized cost of maintenance and repair of a bridge in the condemnation judgment for an easement and right-of-way for a channel across the railroad property. *East Side District* v. *M. & O. R. R. Co.,* 279 Ill. 319 (1917), is to the same effect. In view of these decisions it is not an untenable position for the city to adopt that any statutory requirement of maintenance and repair of Sanitary District bridges is unconstitutional.

Across its main channel the Sanitary District has constructed the following bridges: Western avenue, California avenue, Kedzie avenue, Crawford avenue and Cicero avenue, within the city limits. The Harlem avenue bridge is outside the city limits. As stated in opinion No. 10139, Opinions of the Corporation Counsel, Vol. 20, p. 119, the Sanitary District is obligated to repair and maintain the Western avenue bridge by virtue of an ordinance passed by the City Council on July 11, 1895, and accepted by the Sanitary District on August 14, 1895. The Kedzie avenue bridge, not being designated in section 337, chapter 42, not being governed by any countervening ordinance or agreement, and not replacing an existing public street or highway bridge, clearly should be repaired and maintained by the Sanitary District as indicated in our opinion of April 20, 1942. If the city is successful in sustaining its theory as to the unconstitutionality of section 337, chapter 42, the Sanitary District would also be required to maintain the California avenue, Crawford avenue and Cicero avenue bridges; otherwise the city will be required to maintain these three bridges.

Across its north shore channel the Sanitary District has constructed bridges within the city limits at Devon, Bryn Mawr and Argyle avenues. Only the south half of the Devon avenue bridge is located within the city limits, and indisputably the city has no obligation to repair or maintain that portion of the bridge not located within its territorial boundaries. Our bridge department and this department find no record of any agreements, ordinances or other provisions governing the maintenance of any of these bridges, nor were any of these bridges constructed to replace an existing public street or highway bridge. On the basis of the foregoing authorities, therefore, it is our opinion that the obligation for the repair and maintenance of these bridges rests with the Sanitary District since the construction of the Sanitary District channel created the necessity for the bridges in question.

It should be pointed out, perhaps, that three other bridges cross the north shore channel in addition to those mentioned above. These bridges are located on state-aid roads and have been constructed by the county of Cook or the state of Illinois at Foster, Peterson and Lincoln avenues. They are maintained by the state of Illinois.

WARNING SIGNALS AND DEVICES ON THE BRYN MAWR AVENUE BRIDGE

(No. 10671—Commissioner of Public Works—H. M. A.—July 27, 1942.)

The Sanitary District is obligated to maintain such warning signals and devices on the Bryn Mawr Avenue bridge as may be required by the obstruction which the bridge constitutes in the public highway.

Notice by the Sanitary District to the city that the Sanitary District will remove all said warning signals and devices unless the same are accepted by and maintained thereafter by the city does not operate to relieve the Sanitary District of its legal obligations in the matter.

CHAPTER IV-A

FEDERAL REGULATIONS

VIOLATION OF OPM FIXED PRICE ORDERS

(No. 10587—House of Correction—E. R. H.—January 22, 1942.)

Acceptance of a sale price in excess of the OPM price fixed incurs a liability on the part of both the seller and the purchaser.

Citation: Executive Order No. 8734 (April 11, 1941).

DELIVERY OF TYPEWRITERS BY PAWNBROKERS

(No. 10631—Commissioner of Police—C. P. H.—April 22, 1942.)

Pawnbrokers were prohibited by government order from turning over possession between March 6th and March 17, 1942, of new and used typewriters pledged to secure loans prior to March 6, 1942.

Citation: War Production Board Limitation Order No. L-54-a (March 6, 1942).

SECTION II

POLICE POWERS OF THE CITY

CHAPTER V

REGULATION OF PUBLIC HEALTH, SAFETY AND WELFARE

A. FOODS AND COSMETICS

DISTRIBUTION OF "BUTTER CREAM"

(No. 10208—Board of Health—C. P. H.—February 29, 1940.)

A product known as "butter cream" consisting of skim milk combined with butter made from cream which does not comply with provisions of the code relating to grade A cream, may be manufactured and distributed in Chicago if the product conforms to the regulations pertaining to milk and milk products, and if approval has been obtained from the board of health.

Citations:
Ordinance: Mun. Code: 154-1.
Other Reference: Rules and Regulations, Chicago Board of Health, August 10, 1935.

DISTRIBUTION OF ICE-CREAM MIX

(No. 10217—Board of Health—C. P. H.—March 13, 1940.)

The board of health has no authority to grant permission for the use of any product in the manufacture of ice-cream. However, if any product is a wholesome and pure material which would not create a health hazard, it is not incumbent upon the board of health to prevent the distribution of the product for use in the manufacture of ice cream.

Citations: Mun. Code: 139-8.

INSPECTION FEE FOR MILK DELIVERY VEHICLES FROM OUTSIDE CHICAGO

(No. 10218—President Board of Health—M. H. F.—March 14, 1940.)

An annual inspection fee is required for every vehicle used to deliver milk within the city from plants located outside the city, whether such plants are milk pasteurizing plants not licensed by the city or milk distributing stations operating under board of health permits.

Citation: Mun. Code: 154-2, 155-4.

USE OF FROZEN CREAM IN ICE CREAM

(No. 10220—Board of Health—W. V. S.—March 15, 1940.)

Frozen cream may be used in the manufacture of ice cream provided the regulations of the board of health are complied with.

CURD TENSION IN "ENZYME MODIFIED" MILK

(No. 10232—City Council Committee on Health—W. V. S.—April 1, 1940.)

An amendment to the milk ordinance, changing the curd tension in the definition of "enzyme modified" milk from 20 to 18 grams as established in the minimum requirements of the department of public health of the state of Illinois, will be a valid amendment.

SALE AND LABELING OF COMBINED MILKS

(No. 10239—President, Board of Health—W. V. S.—April 9, 1940.)

There is no objection to the use of a milk bottle cap which contains the designation "Vitamin D" Guernsey milk.

Under existing ordinances, the sale of homogenized milk may not be prohibited unless its sale involves a public health hazard.

Similarly, if no health hazard is involved in the sale of the combined products, the sale of "homogenized soft curd vitamin D milk" should not be interfered with. However, if any foreign substance is added to milk, or if milk has been subjected to special chemical or physical treatment, the labeling of the milk should clearly indicate this.

No illegible matter, or anything which impairs legibility, should be permitted to appear upon a milk bottle cap.

Citations:
Ordinance: Mun. Code: 154-11.
Other reference: 20 Op. Corp. Coun. 27 (No. 10142).

USE OF FROZEN CREAM IN MANUFACTURE OF ICE CREAM

(No. 10241—Council Committee on Health—W. V. S.—April 11, 1940.)

The use of frozen grade A cream in the manufacture of ice cream is not prohibited under present ordinances.

The use of frozen cream from any milk other than grade A milk is prohibited in the manufacture of ice cream.

Citations: Mun. Code: 139-8, 154-1 to 154-22.

USE OF STORED CONCENTRATES IN ICE CREAM

(No. 10243—President, Board of Health—W. V. S.—April 16, 1940.)

The use of butter, milk powder and concentrates which have been converted from grade A milk and milk products is not prohibited in the manufacture of ice cream under existing ordinances.

MISREPRESENTATION IN LABELING OF MILK

(No. 10248—President, Board of Health—C. P. H.—April 18, 1940.)

A dealer who sells milk containing 4.3% butter fat with a bottle label indicating the milk contained 4.5% butter fat does not violate the city ordinances because the 4.3% is above the required minimum. Such misrepresentation, however, violates the state criminal code and the pure food laws.

Citations:
Statutes: IRS '39, 38: 249a.
IRS '39, 56½: 40.
Ordinance: Mun. Code: 154-1, 154-11.

DISPENSING OF MILK IN FRATERNITIES

(No. 10251—President, Board of Health—A. A. P.—April 19, 1940.)

Fraternities and similar institutions are not exempt from the ordinances and regulations with respect to the dispensing of milk to the final consumer in the unopened original containers as received from the distributor.

Citation: Mun. Code: 154-14.

COIN OPERATED MILK DISPENSERS

(No. 10256—President, Board of Health—A. C.—April 27, 1940.)

A milk dealer's license is necessary for each coin-vending machine which dispenses milk in the city.

Citations:
Ordinances: Mun. Code: 154-2, 154-4.
Case: Larson v. City of Rockford, 371 Ill. 441 (1939).
Other reference: 19 Op. Corp. Coun. 164 (No. 9324).

STANDARDIZATION OF MILK

(No. 10260—President, Board of Health—W. V. S.—April 30, 1940.)

The city regulations do not prohibit the standardization of milk by addition of skimmed milk or cream, provided the skimmed milk and cream have been produced in compliance with legal requirements.

Citation: Mun. Code: 154-1.

DISTRIBUTION OF "YAMI YOGURT"

(No. 10292—President, Board of Health—C. P. H.—June 15, 1940.)

A product known as "Yami Yogurt" similar to cultured buttermilk comes within the term "milk products," and its delivery in wax paper containers, in quantities of less than one gallon, would be a violation of the Municipal Code of Chicago.

Citations:
Ordinances: Mun. Code: 154-1 to 154-22.
Coun. J. (1940-41), p. 2601.
Other reference: Rules of Board of Health, regarding grade A milk, adopted January 8, 1935.

MILK FROM UNINSPECTED SOURCES

(No. 10299—Board of Health—F. V. M.—June 26, 1940.)

No milk from uninspected sources may be sold in the city. An amendment to the ordinances would be necessary to permit the sale of milk from uninspected sources for manufacturing purposes where cooking is required.

Citation: Mun. Code: 154-8, 154-14, 154-17.

LABELING OF "FRIZZ" CONTAINERS

(No. 10307—President, Board of Health—C. P. H.—July 3, 1940.)

Under the rules of the board of health, with reference to labeling requirements of containers used to deliver frozen dessert mix, all final delivery containers used in distributing "Frizz" to the ultimate consumer must bear the date on which the mix was pasteurized.

Citations:
Ordinance: Mun. Code: 9-11, 9-26.
Other references: 20 Op. Corp. Coun. 32 (No. 9956).
Rules of Board of Health, regarding frozen desserts, approved Feb. 2, 1939.

LABELING OF PASTEURIZED MILK, CREAM AND SKIMMED MILK

(No. 10312—Board of Health—F. V. M.—July 17, 1940.)

All containers of milk, cream and skimmed milk should be labeled to indicate the maximum time limit of purchases from the time of pasteurization.

This labeling may be phrased to indicate either the particular day in which such milk may be purchased or to indicate the maximum time limit in which it may be sold.

Citation: Mun. Code: 154-11(h), 154-16.

LABELING OF CANNED MEAT PRODUCTS

(No. 10354—President, Board of Health—F. V. M.—October 14, 1940.)

When canned meat and meat food products intended to be sold or offered for sale for human consumption in the city, have been inspected by the board of health as required by the Municipal Code of Chicago, there would be no objection to the use of labels on the cans to certify such inspection.

Citation: Mun. Code: 95-14.

SALE OF MILK IN SINGLE-SERVICE CONTAINERS

(No. 10374—President, Board of Health—F. V. M.—November 26, 1940.)

The city has the right to prevent milk distributors from selling milk and milk products of less than one gallon capacity in single-service containers.

Citations:
Statute: IRS '39, 56½: 133.
Ordinance: Mun. Code: 154-15.

DISTRIBUTION OF MILK IN GLASS CONTAINERS

(No. 10379—Board of Health—J. H. S.—December 5, 1940.)

The city has legislative power to require the distribution of milk in glass bottles, and paper containers are not standard milk bottles. When a distributor obtains an injunction protecting it from prosecution for the sale and delivery of milk in paper containers, it is in

violation of the ordinance in making sales and deliveries in that manner, but the injunction renders it immune from prosecution. Since the injunction operates by its terms and force of law in favor of only one distributor, this distributor is the only one protected from prosecution for violation of the ordinance requiring the distribution of milk in bottles.

Citation: Coun. J. (1939-40), p. 1175.

LICENSING OF RESIDENT FOOD DISTRIBUTING PLANT

(No. 10451—Superintendent, Bureau of License—M. H. F.—April 2, 1941.)

A company selling food products manufactured and packaged outside the city but stored within the city falls within the term "wholesale food establishment" and is required to be licensed as such, despite the fact that such food products may be stored at a public warehouse and the company retains no employees at said warehouse.

Citations:
Ordinances: Mun. Code: 120-2, 130-33, 130-34, 130-36.
Case: City of Chicago v. Great A. & P. Tea Co., Inc., 282 Ill. App. 337 (1935), appeal denied by the Supreme Court, February 19, 1936.

MIXING OF MILKS AT RECEIVING STATION

(No. 10529—President, Board of Health—F. V. M.—September 18, 1941.)

Milk need not comply with the minimum requirements for milk fat and solids-not-fat when it is delivered by the producer to the milk plant or receiving station but when mixed with milk of other producers at the plant or receiving station to form a mixture which complies with ordinance requirements, it may be sold within the city limits.

Citation: Mun. Code: 154-1, 154-10, 154-14.

BUYING OR STORING FOOD TO CREATE A SCARCITY

(No. 10530—Council Committee Investigating Living Costs—A. F. G. —September 9, 1941.)

Under existing law, it is unlawful to buy up food necessary for human consumption to create a scarcity or to fix market prices.

If warehousemen enter into a pool or agreement to keep food from the open market so as to raise prices, they may be criminally prose-

cuted. Also the state director of the department of agriculture may order any foodstuff to be removed from storage when the storage is for the purpose of fictitiously increasing the price of the food stored.

Citations:
Statutes: Cities and Villages act, art. V, sec. 51.
IRS '39, 38: 569, 576.
Uniform Cold Storage act, sec. 8.
Ordinance: Mun. Code: 192-15.

SALE OF "GOLDEN RICH" AS A MILK PRODUCT

(No. 10537—President, Board of Health—F. V. M.—October 2, 1941.)

"Golden Rich," a combination of cream or butter mixed with skimmed milk, comes within the classification of reconstituted or recombined milk and cream and can be sold in the city only if Grade A milk is used and it is approved by the board of health.

Citation: Mun. Code: 154-1.

PROVISION FOR NON-SMOKERS IN FOOD DISPENSING ESTABLISHMENT

(No. 10543—Chairman, Council Subcommittee on Health—M. H. F.—October 17, 1941.)

The city council may require all food dispensing establishments to reserve special sections or tables for non-smokers.

Citations:
Statutes: Cities and Villages act, art. V, pars. 50, 53, 78.
Revised Cities and Villages act, secs. 23-54, 23-63.
Ordinance: Mun. Code: 130-21.
Cases: City of Chicago v. R. & X. Restaurant, 369 Ill. 65 (1938).
City of Zion v. Behrens, 262 Ill. 510 (1914).
State v. Heidenhain, 42 La. Ann. 483 (1890).

DOG FOOD MANUFACTURE AT UNINSPECTED PLANT

(No. 10546—President, Board of Health—F. V. M.—October 21, 1941.)

The city code does not prohibit the removal of parts of animal carcasses from an establishment under Federal inspection to another plant which is not under inspection when such animal parts are to be made into dog food and are not for human consumption.

Citations:
Ordinance: Mun. Code: 95-14.
Other reference: U. S. Dept. of Agriculture Regulations Governing Meat Inspection, No. 11, sec. 21, par. 3.

CLASSIFICATION OF WHIPPED CREAM AS MILK PRODUCT

(No. 10558—President, Board of Health—C. P. H.—November 12, 1941.)

Although the board of health has no power to adopt a resolution which would amend the Municipal Code of Chicago, it may adopt a resolution designating an additional product "whipped cream," as a "milk product" since it is of the same nature and class as the milk products specified in the ordinance and said ordinance authorizes the board to add other milk products.

Citations:
Statute: IRS '41, 24: 23-61, 23-64, 23-81, 23-82.
Ordinance: Mun. Code: 154-1, 154-15.
Cases: Chicago & Northern Pacific R. R. Co. v. Chicago, 174 Ill. 439 (1898).
Hibbard v. Chicago, 173 Ill. 91 (1898).
People v. Mount, 186 Ill. 560 (1900).
Hope v. City of Alton, 214 Ill. 102 (1905).

SALE OF "GOLDEN—V" MILK

(No. 10565—President, Board of Health—F. V. M.—November 25, 1941.)

A product known as "Golden—V" milk, which is Grade A Vitamin D milk to which six other vitamins have been added, may not be sold within the city until the board of health, by resolution, authorizes the addition of these vitamin substances to milk and designates the product resulting from the addition to milk of these substances and until the manufacturer adopts a suitable trademark and files such trademark with the secretary of state.

Citations:
Statute: IRS '41, 56½: 94.
Ordinance: Mun. Code: 154-1, 154-10, 154-11.

EQUIPMENT FOR PACKAGING COTTAGE CHEESE

(No. 10607—President, Board of Health—J. A. V.—February 25, 1942.)

Cottage cheese is not a "milk product" within the meaning of the ordinance.

Equipment used for unpasteurized milk and milk products cannot be used for pasteurized milk and milk products.

Citations:
Statute: IRS '41, 56½: 129.
Ordinance: Mun. Code: 154-1.
Other reference: Regulations of the Board of Health, Item 5 (p), par. 6.

SALE OF HORSE MEAT

(No. 10617—President, Board of Health—F. V. M.—March 11, 1942.)

Horse meat may be sold in Chicago if not sold as food for human consumption.

Citation: Mun. Code: 95-21.

SALE OF "12%" AS GRADE A MILK

(No. 10620—President, Board of Health—C. P. H.—March 17, 1942.)

"12%", a product to contain 12% butter fat and to be made from homogenized, pasteurized grade A milk, may be sold as grade A milk in Chicago.

INSPECTION OF MEAT FROM CATTLE SLAUGHTERED OUTSIDE CITY LIMITS

(No. 10660—President, Board of Health—C. P. H.—June 26, 1942.)

The board of health has authority to inspect all establishments located outside the city that ship meat into the city for human consumption; to conduct an antemortem examination and inspection of all animals before they are slaughtered in such establishment for the purpose of shipping to the city the meat derived from the carcasses thereof; to inspect all such meat to be transported to the city for human consumption; and to require such establishments, animals and meat to comply with the federal meat inspection standards made a part of the code.

Government inspected meat may be exempted from such inspection.

Inspections of food beyond the city limits are justifiable and proper measures for the protection of the public health.

Citations:

Statutes: IRS '41, 24: 23-1, 23-63, 23-64, 23-81, 23-82.
USCA, Title 21, ch. 4, sec. 71.

Ordinance: Mun. Code: 95-14. 95-15.

Cases: Chicago Packing and Provision Co. v. City of Chicago, 88 Ill. 221 (1878).
Kingsley v. City of Chicago, 124 Ill. 359 (1888).
Zeman v. Dolan, 279 Ill. 295 (1917).
Haas v. Commissioners of Lincoln Park, 339 Ill. 491 (1930).
City of Litchfield v. Thorworth, 337 Ill. 469 (1929).
Zurich Accident Ins. Co. v. Industrial Comm., 331 Ill. 576 (1928).
People v. Kramer, 328 Ill. 512 (1928).
People v. Crossley, 261 Ill. 78 (1913).
State v. Nelson, 66 Minn. 166 (1896).

Norfolk v. Flynn, 101 Va. 473 (1903).
State v. Davis, 1 Tenn. C. C. A. 550 (1911).
Hill v. Fetherolf, 236 Pa. 70 (1912).
Korth v. Portland, 123 Ore. 180 (1927).
City of Oakland v. Brock, 67 P. 2d 344 (1937).
Sterrett & Oberle Packing Co. v. City of Portland, 154 P. 410 (1916).
Boyd v. City of Louisville, 178 Ky. 354 (1917).
Leontas v. Savannah, 164 Ga. 278 (1927).

Other references: Rules and Regulations, Bureau of Animal Industry, 11-1-22, Reg. 2, 9.
House Joint Resolution No. 315 of 6-10-42.
43 Corpus Juris, p. 520.
59 Corpus Juris, p. 610.
19 Op. Corp. Coun., p. 4 (No. 9578).
20 Op. Corp. Coun., p. 31 (No. 9954).
20 Op. Corp. Coun., p. 125 (No. 10013).

OPINION OF FOREGOING SYNOPSIS

We have your letter wherein you state that animals are being slaughtered within the state of Illinois outside the city of Chicago and that meat derived from the carcasses of the same is sold or offered for sale for human consumption within the city. You request our opinion with reference to the authority of the board of health to inspect such meat to determine its healthfulness, wholesomeness, and fitness for human food.

The city of Chicago possesses the power to enact an ordinance providing for the inspection of all foods sold in the city. The source of the city's power to enact such an ordinance is contained in the Revised Cities and Villages Act which provides that the city council shall have power to regulate the inspection of all food for human consumption; to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; and to appoint a board of health and prescribe its powers and duties. (Illinois Revised Stats., chapter 24, pars. 23-1, 23-63, 23-64, 23-81, and 23-82.) The Supreme Court of Illinois has upheld the validity of ordinances adopted in accordance with these provisions of the act for the purpose of licensing and regulating the business of slaughtering animals and the sale of meat for human consumption. [*Chicago Packing and Provision Co.* v. *City of Chicago,* 88 Ill. 221 (1878); *Kingsley* v. *City of Chicago,* 124 Ill. 359 (1888).]

Pursuant to the above statutory authority the city council adopted an ordinance providing for the inspection of all meat sold or offered for sale as food in the city. This ordinance is incorporated in the Municipal Code of Chicago, the pertinent provisions of which are as follows:

> "Section 95-14. It shall be the duty of the board of health to detail a sufficient number of meat inspectors for the purpose of inspecting all carcasses or parts of carcasses of cattle, sheep, swine, or goats, and any meat food products thereof, which are to be sold or offered for sale within the city. All such carcasses, meats and meat food products which are fit for human food shall be plainly marked or tagged by said inspectors to show that they have been inspected and passed, and all such carcasses, meats and meat food products as are unfit for human food shall be plainly marked or tagged by said inspectors to show that they have been condemned. Such carcasses, meats, and meat food products which have been inspected and passed by the United States inspectors under the rules and regulations of the bureau of animal industry, may be exempted

from inspection by the city meat inspectors at the discretion of the board of health.

"The standards, rules and regulations for the inspection of said carcasses, meats, and meat food products, and for judging of their fitness for human food shall be those now in use by the bureau of animal industry of the United States Government, or such as shall hereafter be adopted by the city."

Under the Federal Meat Inspection Act, the secretary of agriculture has power to promulgate rules and regulations for the purpose of preventing the use in interstate commerce or foreign commerce of meat and meat food products which are unsound, unhealthful, unwholesome, or otherwise unfit for human food (U. S. C. A., title 21, chap. 4, par. 71, p. 134). Pursuant to this authority the secretary of agriculture adopted standards, rules and regulations for meat inspection to be conducted under his direction by the Bureau of Animal Industry of the United States Department of Agriculture, effective November 1, 1922, which provide in part as follows:

"Regulation 2, Section 1. Every establishment in which cattle, sheep, swine, or goats are slaughtered for transportation or sale as articles of interstate or foreign commerce, or in which carcasses, parts of carcasses, meat, meat products, or meat food products of, or derived from cattle, sheep, swine, or goats are wholly or in part, canned, cured, smoked, salted, packed, rendered, or otherwise prepared for transportation or sale as articles of interstate or foreign commerce which are capable of being used as food for man, shall have inspection under these regulations, except as expressly exempted."

"Regulation 2, Section 2. All cattle, sheep, swine, and goats and all meats and products entering an establishment at which inspection is required by these regulations, and all meat and products prepared, in whole or in part, therein, shall be inspected, handled, prepared, and marked as required by these regulations."

"Regulation 9, Section 1. An antemortem examination and inspection shall be made of all cattle, sheep, swine and goats about to be slaughtered in an official establishment before their slaughter shall be allowed."

The code adopted by reference the federal meat inspection standards. This form of legislation has been upheld by the courts. It has been established by a number of decisions that where portions of another statute are adopted by reference, the effect of the legislation is the same as though the statute or the provisions adopted had been incorporated bodily into the Act. [*Zeman* v. *Dolan,* 279 Ill. 295 (1917); *Hass* v. *Commissioners of Lincoln Park,* 339 Ill. 491 (1930); *City of Litchfield* v. *Thorworth,* 337 Ill. 469, 476 (1929); *Zurich Accident Ins. Co.* v. *Industrial Com.,* 331 Ill. 576 (1928); *The People* v. *Kramer,* 328 Ill. 512, 526 (1928); *The People* v. *Crossley,* 261, 78 (1913).] The purpose of such method of legislation is to avoid encumbering the statute books with useless repetition and unnecessary verbiage (59 C. J., p. 610; 43 C. J., p. 520).

In an opinion to the chairman of the subcommittee on buildings and zoning, dated July 29, 1937 as to the legality of an ordinance adopting by reference the specifications of certain designated organizations, we stated:

"We find no legal objection to the incorporation by reference of the definitely identified standard specifications of the organizations designated in the sections of the ordinance outlined in your letter. This is simply the familiar legislative process of adopting certain

portions of another ordinance, statute or document by reference. It is a method of legislation which is frequently followed and has uniformly been held to be free from constitutional objections. The effect of such reference is the same as though the provisions adopted had been incorporated bodily into the adopting ordinance. (*Sutherland Statutory Construction,* vol. II, sec. 405.) Such adoption takes the adopted document as it exists at the time of the passage of the adopting act, and does not include subsequent additions or modification of the document so taken. (*Knapp* v. *Brooklyn,* 97 N. Y. 520; *Culver* v. *People,* 161 Ill. 81; *City of Charleston* v. *Johnson,* 170 Ill. 336; *Town of Cicero* v. *McCarthy,* 172 Ill. 279; *People* v. *Crossley,* 261 Ill. 78.)" (Vol. XIX, Opinions of the Corporation Counsel, page 4.)

You state as follows:

"1. In the enforcement of section 95-14 of the Chicago Municipal Code, shall the foregoing regulations of the bureau of animal industry of the United States government apply to the carcasses of food animals slaughtered in Illinois, for sale as food in Chicago, even though such regulations specifically mention 'slaughtered for transportation or sale as articles of interstate or foreign commerce?' "

"2. If the regulations of the bureau of animal industry of the United States government do apply, should meat that is slaughtered in Illinois outside of Chicago, for sale in Chicago, come from inspected establishments only as provided in section 1, regulation 2, of the federal regulations?"

"3. Does Federal Regulation 9, section 1, requiring an antemortem inspection of food animals, before slaughter, apply to establishments located outside of Chicago?"

The intention of the city council in adopting the above section of the code was to provide the same standards for inspection by the board of health of meat sold or offered for sale in the city that are used by the federal government for the inspection of meat transported in interstate or foreign commerce. The above section of the code expressly adopted the inspection standards only of the federal meat regulations and did not adopt but necessarily excluded that part of the regulations which limits inspection to meat transported in interstate or foreign commerce. Manifestly, the purpose of the city council could not be otherwise in view of the exemption provisions of the section which provide that meat inspected by the United States meat inspectors may be exempt from inspection by city meat inspectors.

It is therefore our opinion that the board of health has authority, under the above section of the code, to inspect all establishments located outside the city that ship meat into the city for human consumption; to conduct an antemostem examination and inspection of all animals before they are slaughtered in such establishments for the purpose of shipping to the city the meat derived from the carcasses thereof; to inspect all such meat to be transported to the city for human consumption; and to require such establishments, animals and meat to comply in all respects with the federal meat inspection standards which are incorporated in and made part of the code.

However, the above section of the code provides that meat inspected by the federal government and offered for sale in the city may be exempt from inspection by the board of health. In this connection we invite your attention to a joint resolution recently adopted by Congress under date of June 10, 1942 authorizing the secretary of agriculture to provide federal meat inspection during the present war emergency to meat-packing establishments engaged in intrastate commerce only, in order to facilitate the purchase of meat and meat products. The resolution provides as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That upon application for Federal inspection by any slaughtering, meat-canning, salting, packing, rendering, or similar establishment which is not subject to the provisions of law, as amended, known as the Meat Inspection Act, which following the subheading 'For Meat Inspection' under the heading 'Bureau of Animal Industry' in the Act entitled 'An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and eight,' approved March 4, 1907, the Secretary of Agriculture is authorized to cause to be made the same or similar examinations and inspections and cause such other action to be taken in respect of the soundness, healthfulness, wholesomeness, and fitness for human food of meat and meat food products as would be made or taken if meat and meat food products from such establishment were to be used, transported, or sold in interstate or foreign commerce.

"Sec. 2. (a) The Secretary of Agriculture is authorized and directed, insofar as may be practicable, to carry out the provisions of this Act through the existing officers, employees, and facilities through which he carries out the provisions of the Meat Inspection Act, as amended.

"(b) The Secretary of Agriculture is authorized to prescribe such regulations as may be necessary in order to carry out the provisions of this Act.

"(c) The Secretary of Agriculture is authorized to employ persons without regard to the Civil Service Act, as amended, and subsection 6 of section 6 of the Classification Act of 1923, as amended, provided that any persons so employed shall be regarded as holding war-service appointments, under Executive Order 9063.

"Sec. 3. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1943, and each fiscal year thereafter, such amounts as may be necessary to carry out the provisions of this Act.

"Sec. 4. This Act shall cease to be in effect six months after the termination of the present war."

It therefore necessarily follows that all meat inspected by the government pursuant to the above resolution and offered for sale in the city may be exempt from inspection by the board of health.

You further state:

"4. In the enforcement of section 95-14 of the Municipal Code and the foregoing federal regulations, does the health department have the legal right to send inspectors outside of Chicago to inspect slaughtering establishments where the carcasses of such animals are shipped to Chicago?"

"5. If inspections may not be made outside of Chicago and inasmuch as the uterus, udder and other organs of country dressed carcasses are removed at the point of slaughter so that, as a result, certain disease conditions cannot be detected, may the board of health refuse to permit the sale of such carcasses in the city of Chicago?"

In order to ascertain the sanitary quality of food offered for sale within a city, inspection of food establishments where the food is produced or prepared is usually desirable or necessary. Since such establishments are frequently situated beyond the corporate limits of the municipalities where the food is sold, the question arises as to the legality of such territorial inspections.

The courts have uniformly held that inspections of food including milk and meat beyond the city limits are justifiable and proper measures for the protection of the public health. Such inspections do not represent extra territorial operation of food inspection ordinances but are merely to determine whether the food is fit for consumption by the people of the municipality. [*State* v. *Nelson,* 66 Minn. 166 (1896), 68 N. W. 1066; *Norfolk* v. *Flynn,* 101 Va. 473 (1903), 44 S. E. 717; *State* v. *Davis,* 1 Tenn. C. C. A. 550 (1911); *Hill* v. *Fetherolf,* 236 Pa. 70 (1912), 84 A. 677; *Korth* v. *Portland,* 123 Ore. 180 (1927), 126 P. 895; *City of Oakland* v. *Brock,* 67 P. 2d 344 (1937); *Sterrett & Oberle Packing Co.* v. *City of Portland,* 154 P. 410 (1916); *Boyd* v. *City of Louisville,* 178 Ky. 354 (1917), 19 R. C. L., p. 802.] If such establishments refuse to allow inspections to be made the city may refuse to permit the food produced or prepared in the establishments to be sold within the city. [*Leonta* v. *Savannah,* 164 Ga. 278 (1927), 138 S. E. 154.]

In an opinion addressed to the acting president of the board of health under date of February 3, 1939, we held that a milk plant located outside of the state of Illinois that shipped milk into the city must comply with the requirements of the city's milk ordinances and regulations. We stated as follows:

> "The fact that a particular milk receiving station is located outside of the state of Illinois does not exempt the plant from the provisions of the ordinances and regulations. The impact of the ordinances and regulations is not felt until milk and milk products are offered for sale for consumption within the city. The ordinances so construed have no extraterritorial effect and in our opinion are valid." (Vol. XX, Opinions of the Corporation Counsel, p. 31.)

In another opinion to the acting president of the board of health, under date of May 20, 1939, in discussing an order of the city council providing for inspection service of a non-resident packing plant by the board of health and for the reimbursement of the cost of such inspection by the person requesting it, we said:

> "While the city council may provide for inspection service and for the reimbursement of the cost of such inspection service by the person requesting the same such reimbursement, when made, becomes part of the city's funds which may be expended only pursuant to an appropriation made in the annual appropriation bill (*The People* v. *Sergel* (1915), 269 Ill. 619; *Midland Lumber Co.* v. *Dallas City* (1916), 276 Ill. 172; *The People* v. *C. & A. Ry. Co.* (1919), 289 Ill. 282)." (Vol. XX, Opinions of the Corporation Counsel, p. 125.)

In view of the foregoing, it is our opinion that the Board of Health, under the above section of the code, has authority to send its meat inspectors to slaughtering establishments located outside the city that ship meat into the city for human food to inspect and examine such establishments, the animals slaughtered therein and the meat shipped therefrom to the city, in accordance with federal meat inspection standards, to determine whether the meat is fit for human consumption.

It is our further opinion that the board of health also has authority to prohibit the sale and offering for sale in the city of all meat that is not inspected by either the city or the federal government, under section 95-15 of the code which prohibits the sale or offering for sale in the city of all meat that is not so inspected.

"TOPPING" AS A MILK PRODUCT

(No. 10666—Board of Health—F. V. M.—July 15, 1942.)

"Topping," a product primarily made from butter and powdered milk combined with water, vegetable shortening and cocoanut butter, is not a milk product and does not have to comply with Grade A requirements for milk and milk products.

Citations:
Ordinance: Mun. Code: 154-1.

B. LIQUOR

TOILET FACILITIES FOR RETAIL LIQUOR ESTABLISHMENTS

(No. 10172—M. H. F.—January 5, 1940.)

Retail liquor dealers who sell alcoholic liquors for consumption on premises, are required to provide adequate toilet facilities, but this requirement is not applicable to dealers selling for consumption off the premises. This requirement became effective immediately upon passage, and the board of health is not authorized to postpone the effective date of the ordinance.

Citation: Mun. Code: 147-10.

EXHIBITION OF MOTION PICTURES IN TAVERN

(No. 10210—Superintendent, Bureau of License—M. H. F.—February 29, 1940.)

The owner of a tavern, in order to operate and exhibit talking motion pictures within his tavern, must comply with the provisions of the code requiring a license for the operation of a fourth class amusement, unless he is already licensed to operate a public place of amusement.

Citations: Mun. Code: 104-1 to 104-23, 147-12, 155-1 to 155-7, 155-8 to 155-25.

FURNISHING MOTION PICTURE EQUIPMENT TO TAVERNS

(No. 10211—Commissioner of Police—M. H. F.—February 29, 1940.)

The furnishing of motion picture equipment by a manufacturer or distributor of alcoholic liquor to his retail customers for exhibition

in taverns is contrary to the provisions of the Illinois Liquor Control Law.

Citation: IRS '39, 43: Art. VI.

EFFECT OF LOCAL OPTION REFERENDUM

(No. 10253—Alderman, 39th Ward—M. H. F.—April 23, 1940.)

A referendum vote abolishing the sale of alcoholic liquors at retail in a specified territory becomes operative on the thirtieth day following the election at which such vote is cast.

The state law does not operate on the purchaser or consumer in such "dry" or prohibition territory, but rather upon the seller. The retail sale of liquors is prohibited in such restricted area but the operation of a manufacturer's or distributor's business under state license is not so prohibited.

Citation: Ill. Liquor Control law, art. IX, secs. 11, 12, 13.

EMPLOYMENT OF MINORS IN TAVERNS

(No. 10378—Alderman, 40th Ward—M. H. F.—December 4, 1940.)

The employment of all minors in taverns, including minor children of tavern owners, is prohibited.

Citation: Mun. Code: 147-14.

SANITARY REQUIREMENTS FOR PACKAGE LIQUOR STORES

(No. 10632—President, Board of Health—M. H. F.—April 23, 1942.)

Section 147-10 of the Code which prescribes sanitary requirements for retail dealers in alcoholic liquor sold for consumption on the premises applies to package liquor stores which sell liquor for on premise consumption as well as to taverns.

C. WEAPONS

PROHIBITION OF CARRYING OF CONCEALED KNIVES

(No. 10392—Chairman, Sub-committee on Judiciary and State Legislation—M. H. F.—December 26, 1940.)

Under the city's power to prohibit the personal carrying of concealed dangerous or deadly weapons, the city could pass an ordinance fixing the maximum length of the blade of a knife which could lawfully be carried concealed about one's person. It is doubtful, however, whether the prohibition of a knife having a blade longer than two inches would be upheld by the courts; if the maximum length were fixed at three and one-half inches, the ordinance probably would be upheld.

Citations:
Statutes: Ill. Private laws (1867), sec. 16, p. 772.
IRS '39, 24: 6.
Ordinances: Mun. Code: 183-1, 193-1, 193-30.
Cases: Biffer v. City of Chicago, 278 Ill. 562 (1917).
People v. Merritt, 367 Ill. 521 (1937).
McNary v. The People, 32 Ill. App. 58 (1889).
Brown v. State, 105 Miss. 367 (1913); 46 LRA (N. S.) 700 (1913).
Other reference: Webster's New International Dictionary, "stiletto."

SALE AND DISCHARGE OF AIR RIFLES

(No. 10662—Commissioner of Police—C. P. H.—July 3, 1942.)

A license is required to engage in the business of selling air rifles and air guns. Such sales may be made only to persons holding a permit therefor. The discharge or possession for the purpose of discharge of air rifles in the city is prohibited.

Citations:
Ordinance: Mun. Code: 183-10, 183-13, 183-14, 183-15, 193-31.

D. GAMBLING AND LOTTERIES

ELEMENT OF CHANCE IN A QUIZ CONTEST

(No. 10178—Commissioner of Police—C. P. H.—January 18, 1940.)

A game known as "Screen Quiz" contains all the elements of lottery; namely, it is a scheme for the distribution of prizes by lot or chance. The element of chance exists in a "quiz contest" when the

questions propounded may or may not be such as one or more than one can determine by knowledge, opinion or guess to be right or wrong. Such element of guess-work permits a competitor, by chance, to become a co-winner of the cash award.

Citations:
Constitution: Illinois, art. IV, sec. 27.
Statute: IRS '39, 38: 406-414.
Ordinance: Mun. Code: 104-9, 191-2.
Cases: Iris Amusement Corporation v. Kelly, 366 Ill. 356 (1937).
United Detroit Theaters Corporation v. Colonial Theatrical Enterprise, et al., 280 Mich. 425, 273 N. W. 756 (1937).
State v. Globe Democrat Pub. Co., 110 S. W. (2d) 705 (1937).

PORTABLE BOWLING ALLEY TABLE

(No. 10197—Commissioner of Police—M. H. F.—February 9, 1940.)

A portable or board simulating a bowling alley which is not coin operated or coin controlled is not prohibited from use under the provisions of the code which prohibit the keeping for gain or profit any amusement device, the operation of which is governed by the depositing of a coin or token.

If, however, such a device possesses a sufficient number of elements to include it in the classification of "bagatelle or pigeonhole," its use may be prohibited under the ordinance prohibiting the use of such games as bagatelle or pigeonhole.

Citations:
Statute: Cities and Villages act, art. V, sec. 44.
Ordinances: Mun. Code: 104-22, ch. 111.
Cases: Levins v. City of Chicago, 296 Ill. App. 645 (1938).
Coleman v. City of Chicago, 297 Ill. App. 130 (1938).

PRIZE IN THEATER LOTTERIES

(No. 10213—Commissioner of Police—M. H. F.—March 4, 1940.)

Theaters may not conduct lotteries within their premises even though the element of "prize" may be concealed by terming such prize a "gift" or "salary."

Citations:
Constitution: Ill. (1870), art. 4, sec. 27.
Ordinance: Mun. Code: 104-9.
Cases: People v. Monroe, 349 Ill. 270 (1932).
Iris Amusement Corporation v. Kelly, 366 Ill. 256 (1937).

LEGALITY OF "HOLLYWOOD MOVIE QUIZ"

(No. 10501—C. P. H.—July 7, 1941.)

"Hollywood movie quiz" a game in which each purchaser of a theater admission ticket is given a card containing the names of fifteen notables, caricatures of various notables are flashed on a screen, and the patron who has selected the proper names of five of the notables on a single line being entitled to receive a prize, constitutes a chance distribution of money or gift within the prohibition of the city code even though no additional charge is imposed for the privilege of participating in the game.

Citations:

Constitution:	Ill., art. IV, sec. 27.
Statute:	IRS '39, 38: 406 to 414.
Ordinance:	Mun. Code: 104-9, 104-23, 191-2.
Cases:	Iris Amusement Corporation v. Kelly, 366 Ill. 256 (1937).
	United Detroit Theatres v. Colonial Theatre Enterprise, 280 Mich. 425, 273 N. W. 756 (1937).
	State v. Globe Democrat Pub. Co., 110 S. W. (2d) 705 (1937).

"ANTI-AIRCRAFT MACHINE GUN" AS GAMBLING DEVICE

(No. 10556A—Commissioner of Police—C. P. H.—November 5, 1941.)

A coin operated amusement device known as "Anti-Aircraft Machine Gun" which awards the player a prize in the form of free shots at the objects portrayed on the screen of the device upon attaining certain scores is a gambling device.*

Citations:

Statute:	IRS, '41, 38: 324, 341.
Ordinance:	Mun. Code: 191-1, 191-4.
Cases:	Pure Mint Co. v. La Barre, 96 N. J. Eq. 186 (1924).
	Boynton v. Ellis, 57 F. (2nd) 665 (1932).
	Harvie v. Heise, 150 S. C. 150 (1928).
	Gibbons v. People, 33 Ill. 442 (1864).
	Question Game Co., Inc. v. Plover, 273 Ill. App. 187 (1933).
	Swigart v. People, 154 Ill. 284 (1895).
	Tatman v. Strader, 23 Ill. 439 (1860).
	People v. Welthoff, 51 Mich. 203 (1883).
	Almy Mfg. Co. v. City of Chicago, 202 Ill. App. 240 (1916).
	Iris Amusement Corp. v. Kelly, 366 Ill. 356 (1937).
	United Detroit Theaters Corp. v. Colonial Theater Enterprise, 280 Mich. 425 (1937).
	State v. Globe Democrat Publishing Co., 110 S. W. (2nd) 705 (1937).
Other reference:	17 R. C. L., p. 25, Sec. 12.

*NOTE: The Appellate Court of Illinois ruled similarly in *People* v. *One Pinball Machine, owned by Henry Fox,* 316 Ill. App. 161 (1942).

MOVIE SCREEN PUZZLES AS LOTTERY

(No. 10575—Commissioner of Police—C. P. H.—December 15, 1941.)

"The Ghost Walks," a game played in motion picture theaters by flashing on the screen "scrambled words" for the distribution of cash prizes, is a lottery within the prohibition of the Constitution, the statute and the city ordinance.

Citations:

Constitution:	Ill., art. IV, sec. 27.
Statute:	IRS '41, 38: 406-414.
Ordinance:	Mun. Code: 104-9, 104-23, 191-2.
Cases:	Iris Amusement Corp. v. Kelly, 366 Ill. 356 (1937).
	United Detroit Theatres Corp. v. Colonial Theatre Enterprise, et al., 280 Mich. 425, 273 N. W. 756 (1937).
	State v. Globe Democrat Publishing Co., 341 Mo. 862, 110 S. W. (2nd) 705 (1937).

NATIONAL EMERGENCY AS AFFECTING LOTTERY LAWS

(No. 10588—Commissioner of Police—C. P. H.—January 23, 1942.)

National emergency does not suspend the prohibition against the operation of lotteries and schemes of chance.

Citations:

Constitution:	Ill., art. IV, sec. 27.
Statute:	IRS '41, 38: 406-414.

PORTABLE BOWLING ALLEY AS GAMBLING DEVICE

(No. 10604—Commissioner of Police—M. H. F.—February 16, 1942.)

"Junior Bowling Alley," a portable device simulating a bowling alley and equipped with balls or spheres and pins, comes within the prohibition of the bagatelle and pigeonhole ordinance.

Citation: Mun. Code: 193-26.

FORTUNE TELLING IN RESTAURANTS

(No. 10680—Commissioner of Police—C. P. H.—August 27, 1942.)

Fortune telling in restaurants by women who make no charge but who accept voluntary payments from patrons for their services comes within the prohibition of the statute against obtaining money for fortune telling. The fact that the money is given to them voluntarily is not controlling.

Citations:

Case: Williams v. Jacksonville Terminal Co., 86 Law Ed. 598 (1940).

E. OTHER HEALTH AND WELFARE REGULATIONS

CASKET AND CLOTHES OF DECEASED

(No. 10250—President, Board of Health—A. C.—April 19, 1940.)

A cemetery cannot return the casket to the undertaker or allow the removal of the clothes from a deceased where said person has died of a communicable disease. In all other cases, such return or removal may be prohibited if, in the opinion of the board of health, they would be detrimental to the public health.

Citations:
Ordinance: Mun. Code: 99-3.
Other references: Illinois Department of Public Health Rules, p. 52.
20 RCL, sec. 380.

SAFETY CLEARANCES FOR FLAMMABLE LIQUID TANKS

(No. 10276—Division Fire Marshal in Charge of Fire Prevention—A. F. G.—May 21, 1940.)

Team tracks are within the meaning of the term "any other railway right of way" used in the definition of "safety clearance" for purposes of erecting flammable liquid tanks.

If flammable liquid tanks are individually diked and protected by specified fire walls, the minimum safety clearance requirements for the erection of flammable liquid tanks may be reduced.

Citations:
Ordinance: Mun. Code: 51-8, 51-10.
Cases: Chicago & Alton RR. Co. v. People ex rel. Dennison, 98 Ill. 350 (1881).
Lake Erie and Western RR. Co. v. Middlecoff, 150 Ill. 27 (1894).
St. Louis KC&C RR. Co. v. Wabash RR. Co., 152 Fed. 849 (1907).
Other reference: Words & Phrases, v. 4, 2d Series, p. 393.

LIVE POULTRY ESTABLISHMENT AS NUISANCE

(No. 10284—Alderman, 10th Ward—M. H. F.—May 29, 1940.)

When a live poultry establishment is in fact a public nuisance or is conducted in an insanitary manner injurious to the health of employees and the public, the board of health is empowered under the city's general health ordinances to abate the nuisance. Also, residents in the neighborhood, injuriously affected thereby, would be entitled to injunctive relief in the courts to abate the same.

KEEPING OF GOATS AND CHICKENS

(No. 10295—Alderman, 41st Ward—R. N.—June 20, 1940.)

The keeping of goats, chickens, and similar animals within the city is governed by the general nuisance ordinances, subject to enforcement of the board of health.

Citation: Mun. Code: 98-12.

DUMPING IN THE CHICAGO RIVER

(No. 10353—Alderman, 40th Ward—M. D. S.—October 11, 1940.)

The north branch of the Chicago river is a navigable stream and dumping therein is already prohibited by state law, and city ordinance. A proposed ordinance to this effect, therefore, would be merely a repetition of existing law.

Citations:
Statutes: IRS '39, 19: 61.
IRS '39, 38: 466.
Ordinance: Mun. Code: 99-36, 99-74.

"AUTOMATIC HOSTESS" MACHINE

(No. 10365—Commissioner of Police—M. H. F.—November 12, 1940.)

The "Automatic Hostess," which, upon the deposit of a coin, permits the person using the device to carry on a two-way conversation over a radio broadcast telephone line with a "Hostess" at a central location, is an amusement device, controlled by the deposit of a coin or token. Under existing ordinances, the keeping and operating such device for gain or profit is prohibited.

Citation: Mun. Code: 104-22.

RIGHT OF OWNER TO ENTER PREMISES CLOSED FOR HEALTH VIOLATION

(No. 10571—Commissioner of Buildings—M. H. F.—December 4, 1941.)

An order prohibiting the carrying on of business in unlicensed premises does not prevent the owners from frequenting the premises to care for the property or from conducting an auction sale of equipment therein.

DESTRUCTION OF WEEDS

(No. 10674—Board of Health—C. P. H.—August 10, 1942.)

The ordinance which requires that weeds which, due to pollination, are a menace to health, must be pulled or destroyed at intervals specified in the ordinance, is not complied with by cutting said weeds.

Citations:
Ordinance: Mun. Code: 99-9.

BLACKOUT RESTRICTIONS ON LIGHTS IN STORES

(No. 10675—H. R. P.—August 12, 1942.)

The blackout ordinance and the rules and regulations promulgated pursuant thereto require that even the small lights usually kept burning all night by merchants at the rear of stores, must be extinguished during a blackout.

Citations:
Ordinance: Mun. Code: 194-3.
Other reference: Blackout rules and regulations, 9-A.

CHAPTER VI

LICENSES AND PERMITS

A. LIQUOR LICENSE

PROTEST OF RETAIL SALE OF ALCOHOLIC LIQUOR

(No. 10424—Alderman, 5th Ward—M. H. F.—February 20, 1941.)

The sale at retail of alcoholic liquor, when conducted under a license issued to a qualified person whose premises meet all the requirements of the state law and city ordinances, is a lawful business. The petition of citizens in that block, objecting to the establishment of such retail liquor store, is not sufficient to compel revocation or cancellation of a license formally issued.

Citation: Ill. Liquor Control law, art. VII, secs. 7, 8; art. IX.

REVOCATION OF LIQUOR LICENSE IN ANNEXED TERRITORY

(No. 10479—M. H. F.—May 16, 1941.)

The revocation of liquor licenses in an area which had prohibited the sale of intoxicating liquors previous to its annexation to the City of Chicago, would be improper since all prior laws upon the subject of intoxicating liquor were repealed by the Illinois Liquor Control law of 1934.

Citations:
Statutes: IRS '39, 24: 403.
IRS '39, 43: art. IX (Liquor Control Act).
Case: City of Fairfield v. Pappas, 362 Ill. 80 (1935).
Other reference: 18 Op. Corp. Coun. (1929-35), p. 399 (Nos. 8300, 8511, 8539).

POWER OF MAYOR TO DENY RETAIL LIQUOR LICENSE

(No. 10481—M. H. F.—May 19, 1941.)

The mayor is not vested with unlimited discretionary authority to refuse to issue a retail liquor license to an applicant who possesses the prescribed qualifications and whose establishment has complied with all the requirements of the state law and the city's ordinances.

Citation: IRS '39, 43: art. IX (Liquor Control act).

OPERATION OF ADJACENT BEER GARDEN

(No. 10495—Commissioner of Police—C. P. H.—June 19, 1941.)

The operation of a beer garden in an open area adjacent to a licensed tavern is unlawful without an additional license for the open area when this area was not described in the original license.

Citations:
Statutes: Illinois Liquor Control act, art. 2, sec. 1; art. 5, sec. 1 (d); art. 6, sec. 2 (13).
Ordinance: Mun. Code: 147-7.
Cases: Chicago v. Malkan, 119 Ill. App. 542 (1905), affd. 217 Ill. 471 (1905).
Conklin Lumber Co. v. City of Chicago, 127 Ill. App. 103 (1906).
Other references: 19 Op. Corp. Coun. (1936-37), p. 126 (No. 9292).
20 Op. Corp. Coun. (1938-39), p. 133 (No. 10156).

FOOD SHOP SELLING LIQUOR WITHIN 100 FEET OF CHURCH—EMPLOYMENT OF MINORS

(No. 10502—Commissioner of Police—M. H. F.—July 8, 1941.)

Food shops, restaurants, clubs or other places where the sale of alcoholic liquor is not the principal business carried on, if established prior to the date of the Liquor Law, may be licensed to sell liquor within 100 feet of church, school, etc.

Minors may not be employed therein during hours in which liquor is sold.

Citations:
Statute: IRS '41, 43: 127.
Ordinance: Mun. Cole: 147-14.

STATE AND CITY POWERS OVER RETAIL LIQUOR DEALERS

(No. 10556—City Council—M. H. F.—November 5, 1941.)

The regulation of retail liquor establishments operating within the city has been vested by law in the mayor as local liquor control commissioner. The granting and revoking of retail licenses is within the control of local authorities and the only revocation authority possessed by the state liquor control commission with respect to retail licenses is confined to state retailers' licenses. Revocation of local retailers' licenses automatically controls revocation of state retailers' licenses but revocation of the state license does not affect the city license, except in case of revocation of the state license for failure to affix tax stamps.

The state liquor control commission may inspect premises of local retail liquor dealers only for the purpose of ascertaining whether state retailers' licenses have been obtained.

Citations:
Statutes: IRS '74, p. 438.
Cities and Villages act, art. V, secs. 45, 48.
IRS '35, 43: 1.
Illinois Dramshop act, art. III, secs. 4, 12, 13; art. IV, sec. 3; art. VI, sec. 2; art. VII, secs. 5, 6, 7a; art. VIII as amended in 1941.
Ordinances: Ordinance of May 12, 1837 re licensing liquor dealers, Code '56, pp. 407-9.
Mun. Code: 147.
Case: People v. Harrison, 256 Ill. 102 (1912).
Other reference: Coun. J. (1941-2), p. 5729 (Resolution).

OPINION OF FOREGOING SYNOPSIS

At a meeting of your honorable body held October 16, 1941 (Coun. J., p. 5729) there was adopted a resolution reading as follows:

"WHEREAS, The Chicago city government has in recent years continually fought before the State legislature and the courts for broader powers of local self-government; and

WHEREAS, The State legislature has recognized this right of local self-government by granting to municipal officials the power to regulate local liquor establishments; and

WHEREAS, State officials recently have seen fit to invade this area of local regulation with the ultimate potential danger of usurping local regulation and producing wasteful duplication of function by state and city officials; and

WHEREAS, The issues involved are basic to Chicago's long struggle for home rule;

NOW, THEREFORE, BE IT RESOLVED That the Corporation Counsel is hereby requested and directed to render an opinion as to the power of the Illinois Liquor Control Commission to regulate liquor establishments in duplication of such powers as are now exercised by local authorities under state statute."

For many years prior to the Eighteenth Constitutional Amendment and the Volstead Act the regulation of retail liquor establishments in Illinois was a matter expressly delegated to the local authorities of counties, cities, villages and towns under broad principles laid down in the state statutes. The first city charter of Chicago, being an Act to incorporate the City of Chicago, passed March 4, 1837, contained express grants of power to the city's common council to make ordinances to regulate the selling of ardent spirits and authorized the mayor to grant license to tavern keepers and others to sell wines and other liquors. Like powers were granted by the Dram Shop Act of 1874, Illinois Revised Statutes, 1874, p. 438, and subsequent state dram shop statutes. From an early date cities in Illinois were delegated authority by the Cities and Villages Act "to license, regulate and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor," and to forbid and punish the selling or giving away of any such liquor to any minor, or insane or distracted person, habitual drunkard or person intoxicated. Sections 45, 48, article V, Cities and Villages Act, chapter 24, Illinois Revised Statutes.

As early as May 12, 1837, during the term of the city's first mayor, the Chicago council passed an ordinance licensing liquor dealers, reading in part as follows:

> "No person shall after the fifteenth day of June next, keep within the city of Chicago any tavern, petty grocery, ordinary or vitualling house, where oysters, clams, liquors or meat shall be sold unless licensed for that purpose by the common council under the hand of the Mayor agreeably to the 55th section of the act incorporating said city, * * *."

Ordinances regulating the trafficing in intoxicating liquors have been in force in the city since this early date to the effective date of the Eighteenth Amendment to the Federal Constitution. An ordinance passed March 21, 1853, amended September 24, 1855, vested in the mayor authority to grant licenses for the sale of spirituous, vinous and fermented liquors, and authorized the mayor to revoke licenses whenever it shall appear to his satisfaction that the party licensed shall have violated any provision of any ordinance relating to spirituous liquors. This ordinance contained regulatory provisions, Chicago Municipal Code, 1856, pp. 407-409.

Because the business of selling intoxicating liquor was attended with danger to the community and a recognized subject for regulation by the police power of the city, the Illinois courts recognized and sustained the power of the city council, as being coextensive with that of the state, to enact governing regulations and the power of the mayor to exercise broad authority in the matter of granting and revoking liquor licenses and regulating dealers in intoxicating liquors. *The People* v. *Harrison* (1912), 256 Ill. 102, 106.

After the repeal of the Eighteenth Amendment the Illinois legislature passed a new liquor control law which became effective February 1, 1934. Liquor Control Act, chapter 43, Illinois Revised Statutes. By this act the state exercised its police power in the matter of liquor control, established the public policy of the state with reference to the manufacture, sale and distribution of alcoholic liquors, and provided a comprehensive system governing such manufacture, sale and distribution within the state. The control is established by means of state and local licenses provided for in the act. Under this state law the regulation of wholesalers, or manufacturers, distributors and importing distributors, and the issuance of state licenses, is confided to a state agency called the Illinois Liquor Control Commission. This commission is given the following powers, functions and duties (Sec. 12, Art. III):

> (1) To receive applications and to issue and revoke licenses to manufacturers, importing distributors, distributors, retailers, non-beverage users, railroads, including owners and lessees of sleeping, dining and cafe cars, and boats, in accordance with the provisions of this Act.
>
> (2) To fix by regulation the standards of manufacture of alcoholic liquors, and to establish rules for labeling of containers, etc.
>
> (3) To call upon other administrative departments of the state, county, and municipal governments, county and city police departments and upon prosecuting officers for such information and assistance as it may deem necessary in the performance of its duties.
>
> (4) To recommend to local commissioners rules and regulations, not inconsistent with law, for the distribution and sale of alcoholic liquors throughout the state.
>
> (5) To submit to the Governor annually reports of its official acts and recommendations.

(6) To inspect, or cause to be inspected, any premises where alcoholic liquors are manufactured, distributed or sold, but in the case where a local license is required such inspection shall be for the sole purpose of ascertaining whether a state retailer's license has been obtained unless an appeal has been taken in respect to such premises to the state commission in accordance with the act.

(7) To hear and determine appeals from orders of a local commission in accordance with the provisions of the act.

(8) In the conduct of any hearing authorized to be held by the commission, to examine under oath any licensee and his books and records, and to administer oaths and issue subpoenas.

(9) To investigate the administration of laws in relation to alcoholic liquors in this and other states and any foreign countries, and make recommendations to the Governor and through him to the legislature.

Immediately following the section enumerating the above mentioned powers, functions, and duties appears section 13 of article III, which reads as follows:

"Nothing contained in this Act shall, however, be construed to permit the State Commission to issue any license, other than manufacturer's, importing distributor's and distributor's and non-beverage user's license for any premises in any prohibited territory, or to issue any license other than manufacturer's, importing distributor's, distributor's, railroad's or boat's license, or non-beverage user's license, unless the person applying for such license shall have obtained a local license for the same premises. When such person has obtained a local license and has made application to the State Commission in conformity with this Act and paid the license fee provided, it shall be the duty of the State Commission to issue a retailer's license to him."

By an act approved June 4, 1941 article VIII of the state liquor law was amended so as to increase the tax on alcoholic liquors. The amendment requires every retailer within 48 hours after the act takes effect, to affix a stamp to each original unopened package of alcoholic liquor at the rates provided for in the amendment. (The 48 hour period dating from July 1, 1941 has now passed.) The amendment also authorizes the state commission to revoke the license of any manufacturer, importing distributor, distributor or retailer who fails to comply with section 2 of the article which imposes the tax. Section 5b of article VIII (which section was not changed by the recent amendment) provides that any officer or employee of the state department of finance authorized in writing, by the director thereof, shall have power to enter and examine the licensed premises of all licensees to determine whether any licensee has in his possession any package or container of alcoholic liquor which does not have stamps affixed thereto as required by the act. It should, however, be noted that this power of inspection is given to the department of finance and not to the Illinois liquor control commission.

The regulation of retail liquor dealers in cities, villages and incorporated towns and the issuance of local licenses, is delegated to the city council or president and board of trustees, and in counties in respect to territory outside the limits of any such municipality, the county board is given power by general ordinance or resolution to determine the number, kind and classification of licenses, for sale at retail of alcoholic liquor not inconsistent with the state law, and the amount of the local license fees to be paid in their political subdivision, and to establish such further regulations and restrictions upon the issuance of and operation under local licenses not inconsistent with law as the public good and convenience

may require. Section 1, article IV, State Act. This section has recently been amended, but the amendment need not be discussed herein.

The mayor or president of the board of trustees of each city, village or incorporated town, and the president or chairman of the county board, is designated local liquor control commissioner for their respective political subdivisions, and charged with the administration in their respective jurisdictions of the appropriate provisions of the act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted.

Each local liquor control commissioner is vested with powers, functions and duties with respect to local retailer's licenses, among which are the following: (1) To grant and revoke for cause all local licenses issued to persons for premises within the jurisdiction of the local commissioner; (2) to enter or to authorize any law enforcing officer to enter at any time upon any premises licensed under the act to determine whether any of the provisions of the act or any rules or regulations adopted by the local commission or by the state commission have been or are being violated, and to examine said premises in connection therewith; (3) to receive complaints from any citizen within the jurisdiction of the local commissioner that any of the provisions of the act, or any rules or regulations adopted pursuant thereto, have been or are being violated and to act upon such complaints; and (4) to receive local license fees and pay the same forthwith to the city, village, town or county treasurer as the case may be. The local commissioner is also given the right to examine under oath applicants and licensees and their books.

Section 5 of article VII states that the local commission may revoke any license issued by it if it determines that the licensee has violated any of the provisions of the act or of any valid ordinance or resolution enacted by the particular city council, president, and board of trustees or county board, as the case may be; or any applicable rule or regulation established by the local commission which is not inconsistent with law.

Section 6 of the same article, which section relates to proceedings for the revocation of state licenses, reads as follows:

> "All proceedings for the revocation of licenses of manufacturers, distributors or importing distributors, non-beverage users, railroads and boats shall be before the State Commission, and the proceedings shall be in accordance with rules and regulations established by it not inconsistent with law. However, no such license shall be so revoked except after a hearing by the State Commission with reasonable notice to the licensee and opportunity to appear and defend. The revocation of a local license shall automatically result in the revocation of a State license."

Appeals from orders of local commissions or commissioners, the act provides, shall be taken to the Illinois liquor control commission except in the case of the city of Chicago, a city having a population of over 200,000 inhabitants, in which case the act provides for the establishment of a license appeal commission to review the mayor's action. Section 7a, article VII, state act.

Thus it will be seen that in the matter of granting and revoking city retailers' licenses within its territorial limits, and in reviewing the action of the licensing authority, the city of Chicago has been granted a species of autonomy analogous to home rule.

Exercising its authority expressly granted by the state liquor control law, the city council of the city of Chicago enacted its ordinance regulating and licensing retail liquor dealers. Chapter 147 (Liquor Dealers),

Municipal Code of Chicago. In consonance with the State Act, the mayor is designated in the ordinance as local liquor control commissioner and is vested with the granting and revoking authority as to all retailers' licenses.

Manifestly the authority given in section 12 (1) of article III of the state act to revoke licenses relates only to state licenses and not to city of Chicago licenses. This conclusion is supported by section 3 of article IV, which gives the mayor, as local liquor control commissioner, express power to grant and revoke for cause all local licenses issued to persons within his jurisdiction. Furthermore, the revocation authority contained in section 12 (1) is expressly made subject to and limited to that which may be "in accordance with the provisions of this act." The only revocation provisions contained in the act are those which authorize local liquor control commissions or commissioners to revoke local retailers' licenses and those authorizing the state commission to revoke state licenses to manufacturers, distributors, or importing distributors, non-beverage users, railroads and boats (section 6, article VII), and a state retailers' license where the licensee fails to affix tax stamps within 48 hours after July 1, 1941 (section 2, article VIII). The omission to include retailers' licenses among the licenses mentioned in section 6 of article VII, which the state commission may revoke, is significant and shows the legislative intent not to give the state commission revocation authority over local retailers' licenses.

The state act is entirely silent as to any grounds upon which the state commission may revoke state retailers' licenses, except for the ground stated in the amendment of June 4, 1941, which is the failure of a retailer to affix tax stamps, so it must be concluded that the only other ground upon which the state commission can predicate revocation action is the antecedent revocation of the retailers' local license by the local liquor control commissioner. Obviously these two grounds furnish the only reason for the inclusion of the revocation authority as to state retailers' licenses found in section 12 (1) of article III.

The granting and revoking of local retailers' licenses automatically control the granting and revoking of state retailers' licenses (except in the case of the revocation of a state retailers' license for failure to affix tax stamps within 48 hours of July 1, 1941), but the converse is not true, and the revoking of a state retailers' license by the state commission would not have the effect of revoking a city retailers' license. Since state retailers' licenses are automatically controlled by the granting and revoking of local retail licenses, it is obvious that the only interest which the state commission can have in a state retailers' license is that of securing the $50.00 annual revenue for the state.

Approaching the problem from another angle, the legislature could not have intended to vest in two independent authorities the power to revoke local retailers' licenses as this would result in irreconcilable conflicts and therefore be impracticable. The revocation of a local retailers' license is attended with serious consequences. It means permanent disability, the inability ever again to obtain a liquor license. Section 2 (7), article VI, state act. It also prevents the relicensing of the licensed premises to any person for the period of one year after the date of revocation. Section 10, article VIII, state act. It is inconceivable that any authority other than the granting authority should be vested with the power to revoke, or that an agency not intrusted with the authority to regulate should be given the power to arbitrarily destroy. When local autonomy has been delegated to a city and a local control commissioner in granting and revoking retail liquor dealers licenses and regulating retail liquor establishments under the state liquor control law, it would foment chaotic conditions for any other agency, however well intentioned, to assume to function in the same field.

The granting and revoking of retail licenses and the regulation of retailers by local authorities appears to be the clear intent of the legislature, as expressed in the present state act, which in this respect is in harmony with all former acts. In fact without local supervision appropriate and adequate control and surveillance could not be otherwise attained for the reason that conditions are different in different communities, and neither the general assembly could wisely legislate to meet these varying conditions, nor any state agency furnish the constant supervision needed for the great number of retail dispensing establishments located in the numerous and different municipalities throughout the state. For example, without intelligent local legislation to meet the exigencies in Chicago's special and complicated situation, and without the assistance of the city's police and other law enforcing departments, the control of taverns and other liquor dispensing places would amount to no more than an idle gesture. It is believed that if anything approaching wise and adequate supervision is to be given to retail liquor establishments in great cities, that such supervision must necessarily remain decentralized and in the hands of local authorities. Obviously, the existing state commission has not the personnel needed to police 9,000 retail liquor dealers in Chicago, together with all other wholesale and retail establishments in other municipalities and throughout the state, and at the same time perform its legitimate functions imposed upon it by law. Furthermore the state act limits the commission to the employment of such inspectors and other employees as may be necessary to carry out the provisions of the state act or to perform the duties and exercise the powers conferred by law upon that commission. It does not authorize the state commission to engage personnel to supplement and superimpose regulation upon local retailers in addition to that provided by local authorities. Section 4, article III, state act.

If it should be argued that local control will not be dissipated by further and additional control furnished by the state commission, and that the state commission's supervision is merely supplemental to that of local authorities, a complete answer may be found in the fact that no licensee can obey two masters, and no regulatory law could be upheld which would subject the same person to plural and possibly conflicting control in the highly hazardous business of dispensing intoxicating liquors. So long as the regulation of retail liquor dealers in Chicago is reposed in the local liquor control commissioner, and the regulation of wholesalers is vested in the state commission, a prudent self restraint is called for at all times if state and municipal functions are to be maintained in stable equilibrium. The need is clamant for cautious hesitation on the part of each agency to act within the realm of its appointed duties so as not to impinge upon the duties reposed by law upon the other. If the matter of enforcement of state law is thought to be at stake the constituted officials of the city may not be regarded as less zealous guardians than the appointed members of the state commission.

Our conclusions, therefore, are that the regulation of retail liquor establishments operating within the city of Chicago has been vested in the mayor of the city, as local liquor control commissioner; that the only revocation authority possessed by the state commission with respect to retail licenses is confined to state retailers' licenses and automatically controlled by the revocation action of the local authority; and the only visitation or surveillance of premises of local retailers authorized by the state act to be carried on by the state commission is limited to that commission's inspection for the sole purpose of ascertaining whether state retailers' licenses have been obtained.

SETTING ASIDE REVOCATION OF LIQUOR LICENSE

(No. 10557—M. H. F.—November 7, 1941.)

The mayor, as local liquor control commissioner, has no jurisdiction to set aside his revocation of a retail liquor dealer's license after the revocation has been made and an appeal from such action taken to the license appeal commission.

BUSINESS HOURS OF CIGAR STORE SELLING LIQUOR

(No. 10593—Commissioner of Police—M. H. F.—February 4, 1942.)

Cigar stores for which retail liquor dealers' licenses have been obtained may not remain open during prohibited hours of sale set by section 147-13 of the code.

Citation: Mun. Code: 147-13.

LICENSE RENEWAL DURING PERIOD OF MILITARY SERVICE

(No. 10636—City Collector—M. H. F.—May 1, 1942.)

Application for renewal of city retailer's alcoholic liquor license may, during the period of the licensee's service with the armed forces of the United States, be made by an attorney in fact. In such case, service of notice upon licensee's agent would be sufficient service upon licensee.

B. UNDERTAKERS' LICENSES

TWO UNDERTAKERS' LICENSES AT ONE PLACE

(No. 10246—President, Board of Health—C. P. H.—April 17, 1940.)

Separate licenses may be issued to two persons to engage in the undertaking business at the same location, provided they otherwise qualify to act as undertakers.

Citation: Mun. Code: 181-1, 181-5.

BURIAL OR CREMATION OF OUT OF TOWN BODY

(No. 10252—President, Board of Health—A. A. P.—April 23, 1940.)

Out-of-town undertakers may bring a dead human body into the city for burial or cremation, but may not bury or cremate the body

without the assistance and cooperation of a duly licensed undertaker of the city of Chicago.

Citation: Mun. Code: 93-10.

TELEPHONE LISTING OF DECEASED UNDERTAKER

(No. 10521—President, Board of Health—F. V. M.—August 21, 1941.)

The listing of a deceased undertaker in the telephone directories under the classification of undertaker violates the city code.

Citations:
Ordinances: Mun. Code: 181-1.
Code '31: 3794.
Other reference: 18 Op. Corp. Coun., p. 548 (No. 8677).

TWO UNDERTAKERS' LICENSES FOR ONE LOCATION

(No. 10528—President, Board of Health—F. V. M.—September 8, 1941.)

There is no ordinance provision which prohibits the issuance of more than one undertaker's license for one location, and ownership of the establishment is not a requirement.

Citations:
Statutes: Funeral Directing and Embalming law, art. I, sec. 3.
Illinois Liquor Control law, art. VII, sec. 1.
Ordinance: Mun. Code: 101-27, 181-1 to 181-11.
Other references: 5 Op. Corp. Coun. (1909), p. 215.
Opinion No. 10246 of April 17, 1940 to President of Board of Health.
18 Op. Corp. Coun., p. 544 (No. 8676).

OPERATING UNDERTAKING ESTABLISHMENT UNDER DECEDENT'S NAME

(No. 10555—President, Board of Health—M. H. F.—November 3, 1941.)

Neither licensed undertakers nor administrators with approval of the Probate Court may operate undertaking establishments in the names of deceased owners, or advertise the businesses or hold the same out to the public as being conducted by the former owners. Licensed undertakers may carry on the business, in their own names, as successors to the former owners, while the estates are being settled.

Citations:
Ordinance: Mun. Code: 181-1.
Other reference: 18 Op. Corp. Coun., p. 548 (No. 8677).

LICENSES OF UNDERTAKERS IN U. S. ARMED FORCES

(No. 10600—President, Board of Health—M. H. F.—February 13, 1942.)

The statute authorizes special treatment of ex-service men whose certificates as funeral directors or embalmers lapse while in service or training with the armed forces of the United States. The present city ordinance makes no such exception.

Note: Ordinance amended 3-25-42 (Coun. J., p. 6787).

Citations:
Statute: IRS '41, 111½: 73.1-73.31.
Ordinance: Mun. Code: 181.

C. DRIVERS' AND VEHICLE LICENSES

ASSIGNMENT OF TAXICAB LICENSE

(No. 10181—Public Vehicle License Commissioner—A. F. G.—January 23, 1940.)

A taxicab licensee has a property right in his license which he may assign to any person whom the public vehicle license commissioner deems qualified, subject to the assumption by such assignee of all liability arising from the maintenance and operation of any taxicab.

Neither a physical disability which makes a person ineligible to be licensed as a chauffeur nor the financial inability to meet the cost of proving financial responsibility, deprives such person of the right to assign his taxicab license.

Citations:
Statute: Financial Responsibility Act, sec. 42 to 44.
Ordinance: Mun. Code: 196A-3.

VEHICLE LICENSE OF TOW TRUCKS

(No. 10183—City Collector—A. F. G.—January 25, 1940.)

A "tow truck" designed to tow disabled automobiles should be classed as a "motor truck" for purposes of licensing and should be subject to the license fee required for that class of vehicle.

Citations:
Ordinance: Mun. Code: 29-5.
Other references: Branham Automobile Reference Book (1940).
Century Dictionary "conveyance."

DRIVER'S LICENSE TO PERSON UNLAWFULLY CONVICTED

(No. 10195—Public Vehicle License Commission—A. F. G.—February 5, 1940.)

The issuance of a driver's license is not barred to a person who has served time in a penitentiary as a result of conviction of a felony which conviction is later reversed and annulled by the Supreme Court. The unlawful conviction of a felony does not constitute a disqualification to be licensed as a public vehicle driver.

Citations:
Ordinance: Mun. Code: 28-35.
Cases: People v. Zoronsky, 362 Ill. 78 (1935).
People ex rel. Zonronsky v. Chicago, 293 Ill. App. 301 (1938).

MOTOR VEHICLE LICENSE FOR FORMER NON-RESIDENT

(No. 10200—J. H. S.—February 16, 1940.)

The owner of a motor vehicle, who is a resident of the city of Chicago, must procure a city vehicle license for his car, even though the car has previously been registered in another state.

Citations:
Statute: IRS '39, 95½: 22, 32.
Ordinance: Mun. Code: 29-2.
Cases: Roe v. City of Jacksonville, 319 Ill. 215 (1926).
City of Flora v. Borders, 342 Ill. 208 (1931).

OWNER'S IDENTIFICATION ON DELIVERY VEHICLES

(No. 10209—R. N.—February 29, 1940.)

All vehicles used in the transportation of property along the public ways of the city, are required to have the name and address of the owner thereof plainly painted in a conspicuous place on the outside of such vehicle.

Citation: Mun. Code: 29-14.

CITY VEHICLE STICKERS FOR TEMPORARY RESIDENT

(No. 10227—R. N.—March 22, 1940.)

All persons operating motor vehicles upon the public ways of the city are required to obtain Chicago vehicle stickers for the motor vehicles so operated, even though the operator may be a temporary resident of the city.

Citation: Mun. Code: 29-2.

TAX ON NON-RESIDENT VEHICLES

(No. 10238—Alderman, 37th Ward—M. H. F.—April 8, 1940.)

Until the State Motor Vehicle law is amended so as to authorize cities to impose a vehicle tax on non-resident owners of motor vehicles used for public hire accepting, discharging or delivering passengers or freight within the city, no such tax on non-residents may be imposed.

Citations:
Statute: Illinois Motor Vehicle law, secs. 20, 26a.
Ordinance: Coun. J. (1936-37), pp. 3423, 3574.
Cases: City of Flora v. Borders, 342 Ill. 208 (1930).
American Baking Co. v. Wilmington, 370 Ill. 400 (1939).
City of Chicago v. Hastings Express Co., 369 Ill. 610 (1938).
City of Chicago v. Dorband, 297 Ill. App. 617 (1938).
Other reference: 19 Op. Corp. Coun. 137 (1936).

FREE VEHICLE EMBLEM TO FOREIGN AMBULANCE COMMITTEE

(No. 10263—M. H. F.—May 2, 1940.)

The city is without authority to issue free "city vehicle tags."

Only certain named agencies and persons are exempt from the city's wheel tax, and this group does not include a committee for the aid of a foreign ambulance fund.

NONCOMPLIANCE WITH MOTOR VEHICLE TEST

(No. 10415—Commissioner, Public Vehicle License Commission—A. F. G.—February 7, 1941.)

If a vehicle owner submits his vehicle for inspection and finds that the adjustments and repairs necessary to bring the vehicle in compliance with the requirements of the laws governing motor vehicles are beyond his financial ability to pay, or that the car is not worth the expenditure of the sums necessary to make it comply, he cannot be required to make such repairs unless he again operates the car or causes it to be operated in the city. The offense under the ordinance is not the ownership of a noncomplying vehicle but its operation on the streets of the city.

Citation: Mun. Code: 27-85, 27-86.

CLASSIFICATION OF STATION WAGON FOR WHEEL TAX PURPOSES

(No. 10462—City Collector—M. H. F.—April 22, 1941.)

Station wagons designed and used to transport persons should be classified as either sixth or seventh class vehicles under the wheel tax ordinance, the particular class depending upon the horse power. If a so-called station wagon is designed and used principally for the transportation of property, rather than passengers, it should be considered in the ninth class.

Citations:
Ordinance: Mun. Code: 29-5.
Case: Harder v. City of Chicago, 235 Ill. 294 (1908).

CLASSIFICATION OF TRUCKS BY LOAD CAPACITY

(No. 10524—Alderman, 28th Ward—M. H. F.—August 28, 1941.)

A truck designed to convey a load greater than one ton makes the owner ineligible for a license covering trucks designed to convey loads of one ton or less, regardless of the fact that the owner chooses to convey loads of less than one ton.

Citation: Mun. Code: 29-5.

TRANSFER OF TAXICAB LICENSE

(No. 10563—Public Vehicle License Commission—P. J. L.—November 21, 1941.)

A taxicab license is transferable if the public vehicle license commissioner approves the qualifications of the assignee of such license and the assignee assumes the liabilities of the assignor.

Citation: Mun. Code: 196A-3.

WHEEL TAX ON TRUCKS OPERATING FROM TERMINAL OUTSIDE OF CHICAGO

(No. 10669—J. H. S.—July 24, 1942.)

The city may impose a vehicle tax upon owners of motor vehicles who are residents within the city irrespective of whether the vehicles are used in a business that is transcontinental, interstate, intercity or intracity or whether such business is that of a contract carrier or common carrier. Residence is determined by location of home office and principal place of business.

Citations:
Statute: IRS '41, 95½: 32a.
Ordinance: Mun. Code: 29-2.
Cases: Fairbanks Shovel Co. v. Wills, 240 U. S. 642 (1915).
Chicago etc. R. R. Co. v. Bank of North America, 82 Ill. 493 (1876).
Hewitt v. General Electric Co., 164 Ill. 420 (1897).
Other reference: 19 Op. Corp. Coun., p. 137 (No. 9260).

OPINION OF FOREGOING SYNOPSIS

This will acknowledge receipt of your letter of July 22, 1942, asking for our interpretation of the law respecting your obligation to take out city motor vehicle licenses for your trucks. You state that you are common carriers engaged in interstate commerce with your home office at Chicago and terminals at Chicago Heights and Waukegan, Illinois. You further state that all of your 1942 city vehicle licenses have been purchased in Chicago with the exception of a few which have been taken out in Waukegan, Illinois, where these trucks are domiciled and where you maintain a terminal office and dispatcher, and that you have taken out these Waukegan licenses because your business in that town represents approximately 30 per cent of your total gross tonnage. Your inquiry is prompted by the fact that recently one of your trucks bearing a 1942 Waukegan vehicle tag on its windshield was stopped and given an arrest slip for failure to have a Chicago vehicle tag and that a hearing is to be had in the case on August 3, 1942.

On August 19, 1936, we rendered an opinion to the City Council of the City of Chicago (Opinions of the Corporation Counsel, Volume XIX, page 137) wherein we said:

> "1. The city of Chicago may impose a vehicle tax or license fee for the privilege of using the streets upon *owners of vehicles who are resident within the city* irrespective of whether the vehicles are used in a business that is transcontinental, interstate, intercity, or intracity or whether such business is that of a contract carrier or common carrier."

The statute granting the city such power has not been changed in this respect since the opinion was written. (Section 26a, Motor Vehicle Act, Illinois Revised Statutes, 1941, chapter 95½, paragraph 32a.) Accordingly, if your corporation is a resident of the city of Chicago, the city may exact from you a motor vehicle license with respect to each motor vehicle owned by you and operated upon the streets of the city. (Section 29-2, Municipal Code of Chicago.)

Your home office and principal place of business is at Chicago. Under these circumstances the residence of your company is considered to be Chicago. (*Fairbanks Shovel Co.* v. *Wills,* 240 U. S. 642 (1915); *Bank of North America* v. *Chicago, etc. R. R. Co.,* 82 Ill. 693 (1876); and *Hewitt* v. *General Electric Company,* 164 Ill. 420 (1897).)

It is accordingly our opinion that the city of Chicago is the only municipality within the state which has the power to exact a motor vehicle license of your company, and that the city has the power to exact a fee for every vehicle owned by you operated upon the streets of the city.

BASIS OF WHEEL TAX ORDINANCE

(No. 10696—City Clerk—J. H. S.—October 14, 1942.)

The authority of the city to exact a vehicle license under statute and ordinance is predicated on two conditions, both of which must exist: (1) the owner must be a resident of the city, and (2) the vehicle must be used on the public ways of the city. Both actual use of the streets and actual residence of the owner are determining.

1. Vehicles registered in another state and using Chicago streets need no city license.
2. Vehicles registered in another Illinois city and using Chicago streets—license depends on actual residence of owner and not on residence as stated in license application.
3. Vehicles registered from Chicago address and not using Chicago streets need no city license.

Citations:

Statute:	IRS '41, 95½: 32a.
Ordinance:	Mun. Code: 29-2.
Cases:	Fairbanks Steam Shovel Co. v. Wills, 240 U. S. 642 (1915).
	Bank of North America v. Chicago etc. R. R. Co., 82 Ill. 493 (1876).
	Hewitt v. General Electric Co., 164 Ill. 420 (1897).

OPINION OF FOREGOING SYNOPSIS

This will acknowledge receipt of your letter dated September 23, 1942 requesting our opinion regarding the power of the city to compel motor vehicles to obtain city vehicle tags. You refer to our opinion dated June 11, 1942 which covered only truck owners who gave Chicago addresses when obtaining state vehicle licenses. Your letter requests our opinion concerning motor vehicles falling into various categories as hereinafter more fully described.

As a general rule, for your guidance, please be advised that under the state law (Section 26a, Motor Vehicle Act, Ill. Rev. Stats., 1941, chap. 95½, par. 32a) the city may exact a motor vehicle license only from persons residing within the city. The first paragraph of section 29-2 of the Municipal Code of Chicago introduces the additional element of use of the motor vehicle upon the public ways of the city. Giving effect to both the statute and the ordinance, these two elements must be present in order to permit the city to exact a motor vehicle license, namely, (1) the owner must be a resident of the city, and (2) the motor vehicle must be used upon the public ways of the city.

The second paragraph of section 29-2 requires persons not residing within the city and using motor trucks, motor driven commercial vehicles or motor driven vehicles which are used for public hire upon the public ways of the city to take out a city motor vehicle license unless the owner shall have obtained a certificate of registration from the secretary of the state of Illinois. In our opinion this provision of the ordinance is beyond the power of the city council to enact since it attempts to exact a motor vehicle license from a nonresident owner.

With the foregoing general rules in mind, the answers to your specific questions which follow are apparent.

"1. Whether vehicles that *do not* bear an Illinois license but use the streets in the City of Chicago in making deliveries, would they be obligated to get proper vehicle tags?"

If the vehicles are not required to bear an Illinois license by reason of the owner being a resident of another state and exempt by reason of reciprocity between the states, then no city vehicle license is required.

"2. Whether vehicles that *do have* an Illinois license but registered from another city but use the streets in the City of Chicago in making deliveries, would they be obligated to get proper vehicle tags?"

The designation of residence in another city when the vehicle is registered with the secretary of state is merely one element indicating residence in that city. The important fact is actual residence. If the owner of the vehicle is in fact a resident of the city of Chicago, the city may exact a vehicle tax even though the owner may have stated his residence to be in another city. The use of the streets of the city by a non-resident does not subject him to liability for a city vehicle license.

"3. Whether vehicles that *do have* an Illinois license and are registered from a Chicago address but where such vehicles are not used in Chicago but are used in other states or parts of Illinois (in other words the state license was taken out for these particular trucks from a Chicago address but these trucks are used exclusively outside of the City of Chicago) are they subject to a city license tag?"

Since the trucks are not used on the public ways of the city, the ordinance does not require a city vehicle tag.

"4. Would trucks that are registered in another state but whose owners have a Chicago branch with some of their trucks licensed from Illinois (Chicago address) and where these trucks make various drop shipments in different parts of the city although they do come directly from another state, are these truck owners duty-bound to have a Chicago vehicle tag?"

In this case it would be necessary to determine where the owner resides. In the case of a corporation, the place of residence would be the home office and principal place of business. (*Fairbanks Shovel Company* v. *Wills,* 240 U. S. 642 (1915); *Bank of North America* v. *Chicago, etc. R. R. Co.,* 82 Ill. 693 (1876); and *Hewitt* v. *General Electric Company,* 164 Ill. 420 (1897).)

"5. What is your opinion in cases where trucks come directly from other states and make drop shipments at various terminals, etc. in the boundaries of the City of Chicago? Is this in the category of interstate shipments or are they subject to a license?"

Here again the question of residence would have to be determined. The fact that the shipments are interstate in character is of no significance. Exaction of a vehicle license is not regarded as a burden upon interstate commerce. (See our opinion to you dated June 11, 1942.)

You further state that you are running into difficulty as many large trucking concerns insist that if you enforce the ordinance in conformity with our opinion of June 11, 1942, that next year they will get a state

license from another address outside of the city of Chicago, for example, one of their terminals. In our opinion of June 11, 1942 we stated that if the owner of a vehicle registers such vehicle with the secretary of state for the purpose of obtaining a state license and gives a Chicago address, it must be presumed that the owner is a resident of the city of Chicago. This presumption, however, is not conclusive. If the corporation can show convincingly that the home office and principal place of business is not in Chicago, then in our opinion they are not residents of the city and are not required to take out a city license. Conversely, if the home office and principal place of business is in Chicago, then the corporation is a resident of the city of Chicago and must take out a city license. The giving of a Chicago address when registering with the state is simply a fact upon which the city officials may make an initial presumption of residence within the city. The address stated in the application for registration is not controlling.

D. OTHER LICENSES AND PERMITS

LICENSING OF TEAR GAS BURGLAR ALARM

(No. 10170—Commissioner of Police—C. P. H.—January 4, 1940.)

A burglar alarm device exploding a tear gas bomb is in the nature of a blank cartridge and explosive, and is subject to the licensing requirements for the sale of the same.

Citations:
Ordinance: Mun. Code: 125-1.
Other reference: Op. Corp. Coun. v. 18, p. 520.

PEDDLING OF SHOE POLISH

(No. 10173—R. N.—January 5, 1940.)

No license is required for the sale of shoe polish in the city. A peddler's license is required if shoe polish products are peddled from door to door, regardless of whether the product is manufactured by the person peddling the same.

LICENSING OF AUTOMOBILE PARTS DEALERS

(No. 10186—Alderman—A. F. G.—January 28, 1940.)

The city has neither the power to license automobile parts dealers nor the power to revoke a state license issued to such dealers under authority of the Uniform Motor Vehicle Anti-Theft Act.

Citations:
Statute: Uniform Motor Vehicle Anti-Theft Act, sec. 12.
Case: Bullman v. City of Chicago, 367 Ill. 217 (1938).

SUCCESSIVE PERMITS FOR "CLOSING OUT SALES"

(No. 10191—City Clerk—A. C.—February 2, 1940.)

The city clerk is not authorized to issue a second permit for a company to hold a "closing out sale." Only one license of this nature may be issued to each company.

Citations:
Statutes: IRS '39, 121½: 150, 153.
Ill. Laws (1933) p. 977.
Cases: People v. Yonker, 351 Ill. 139 (1933).
Village of Glencoe v. Hurford, 317 Ill. 203, 219 (1925).
City of Rockford v. Schultz, 296 Ill. 254, 257 (1921).

REVOCATION OF DRIVEWAY PERMITS

(No. 10202—Superintendent of Streets—R. N.—February 20, 1940.)

Driveway permits may be revoked by the mayor or by an order passed by the city council, or may be revoked by the commissioner of streets and electricity for failure and neglect of driveway grantee to comply with the pertinent provisions of the code.

Where there is no claim that the grantees have failed or neglected to comply with such provision, driveway permits may be revoked by a council order rescinding the orders under which the permits were issued.

A person maintaining a driveway without a permit should be prosecuted under the code provision requiring such permit.

Citation: Mun. Code: 33-21.

LICENSE FOR CORPORATION WITH CHANGE OF NAME

(No. 10229—City Collector—M. H. F.—March 30, 1940.)

A corporation which has changed its name may receive a gasoline filling station license in its new name, and upon receipt of same may then apply for a refund of the fee paid for the current license period in the previous name.

Before any change is noted or any further license is issued to the corporation under any name, the corporation should discharge its indebtedness to the city.

Citation: Mun. Code: 101-14.

TERRITORIAL SCOPE OF PLUMBER'S LICENSE

(No. 10240—A. F. G.—April 11, 1940.)

Under recent amendment of the State Plumbers License law, a plumber's license issued by either the state or the city becomes operative throughout the state.

Citations:
Statute: Illinois Plumbing License law, sec. 12.
Ordinance: Mun. Code: 162-12.
Other reference: House Bill No. 1015 (1939).

LICENSES AND PERMITS FOR ICE CREAM VENDORS

(No. 10283—Superintendent, Bureau of License—M. H. F.—May 29, 1940.)

Commissaries and storage places of licensed ice cream manufacturers from which distribution is made to employees for retail sale, are subject to license under the wholesale food establishments license ordinance.

Each employee engaged in peddling, selling or offering ice cream, for sale from vehicles or otherwise, is subject to license under the peddlers license ordinance.

When vehicles are used as stands on a public way, from which sales are made, both a compensation permit for the use of public ways and a retail food purveyor's license would be necessary for each location occupied.

Citations:
Ordinances: Mun. Code: 130-10 et seq., 130-33, 139, 160.
Case: City of Chicago v. Great Atlantic & Pacific Tea Company, 282 Ill. App. 337 (1935).
Other reference: 18 Op. Corp. Coun. 365 (No. 7599).

LICENSE FOR FARMER PEDDLERS

(No. 10287—Attorney General—M. H. F.—June 10, 1940.)

An 1872 act for the protection of farmers does not affect the power of city to require a license for peddling farm products in the city, as it is applicable only to farmers selling produce at regularly established markets.

Citations:
Constitution: Illinois, Fourteenth Amendment, art. IV, sec. 22.
Statute: Act for protection of farmers, etc., approved Jan. 13, 1872.
Case: Maralllis v. City of Chicago, 349 Ill. 422 (1932).
Other reference: 18 Op. Corp. Coun. 538 (Nos. 7154, 8024), 549 (No. 7984).

LICENSE FOR BAKERY WITH RETAIL STORES

(No. 10289—Superintendent, Bureau of License—M. H. F.—June 12, 1940.)

A person operating a number of retail bakeries and doing all the baking at one of the retail stores is not engaged in the wholesale bakery business, but each of the retail stores is subject to license under the food purveyor's license ordinance.

Citation: Mun. Code: 107-2, 107-5.

OPERATION OF X-RAY LABORATORY BY CHIROPRACTORS

(No. 10348—President, Board of Health—F. V. M.—September 27, 1940.)

A chiropractor or layman who operates an X-ray laboratory and makes diagnostic interpretations of the films taken is violating the Medical Practice act.

Section 144-3 of the Municipal Code of Chicago does not apply to diagnostic interpretation of X-ray films but only to the conduct of laboratories as defined in section 144-1 of the code.

Citations:

Statute:	IRS '39, 91: 24.
Ordinance:	Mun. Code: 144-1, 144-3.
Cases:	Collins v. Texas, 223 US 288 (1912).
	Dent v. West Virginia, 129 US 114 (1889).
	Watson v. Maryland, 218 US 173 (1910).
	People v. Jordan, 172 Cal. 391 (1916).

MASTER PLUMBER EXAMINATION

(No. 10357—Board of Examiners of Plumbers—A. F. G.—October 21, 1940.)

A person licensed as a master plumber in a state which does not license journeyman plumbers would be entitled to be examined to prove his qualifications as a master plumber.

Citations:

Ordinance:	Mun. Code: 162-3.
Cases:	Allgeyer v. Louisiana, 165 US 578; 41 (L. ed.) 832 (1896).
	People v. Hinrichsen, 161 Ill. 223 (1896).

NON-RESIDENT ITINERANT MERCHANTS SELLING CHRISTMAS TREES

(No. 10372—Alderman, 40th Ward—M. H. F.—November 22, 1940.)

Non-resident itinerant dealers in Christmas trees are not subject to license under present ordinances, but a license may legally be imposed upon them. If the itinerant merchants' ordinance were amended to omit the clause reading "in any hotel, rooming house, club or other public place" and exempting dealers otherwise licensed, then all itinerant merchants within the terms of the definition in this ordinance would be subject to license.

Citations:
Statute: IRS '39, 24: 74.
Ordinances: Mun. Code: 141-2, 141-4.
Wholesale itinerant produce dealer's ordinance.

ISSUANCE OF PERMITS FOR ELECTRICAL SIGNS

(No. 10387—Commissioner of Buildings—A. F. G.—December 13, 1940.)

All permits for electric signs are issued by the electrical inspection division. The commissioner of buildings is not authorized to issue any such permits, but is directed to approve detailed plans for electric signs of certain types, before permits are issued. For other specified types of electric signs, the plans must be approved by both the commissioner of buildings and the division of electrical inspection before permits may be issued.

Citations: Mun. Code: 86-27, 88-48(f).

TRAP-DOOR PERMIT WHEN FEE IN ABUTTING OWNER

(No. 10396—City Comptroller—E. H.—January 2, 1941.)

The city may properly require a new owner to obtain a transfer permit and file a new bond for the continuance of a trap-door in a public sidewalk, notwithstanding that the fee of the public street belongs to the abutting owners.

Citations:
Cases: Ryerson v. City of Chicago, 247 Ill. 185 (1910).
Brauer v. Balt. Refr. Co., 66 LRA 403 (1904).
Sears v. City of Chicago, 247 Ill. 204 (1910).
Other reference: 28 Cyc. 859.

LICENSING THE STORAGE OF FLAMMABLE LIQUIDS

(No. 10399—Chairman, Committee on License—M. H. F.—January 8, 1941.)

The city council has the power to regulate and license the storage of flammable liquids having a flash point below 187° F. for use or sale in any business when such liquids exceed in quantity 50 gallons.

Citations:
Statute: Cities and Villages act, art. V, sec. 65.
Ordinance: Mun. Code: 46-37 to 46-39.

REGULATION OF PRIVATE EMPLOYMENT AGENCIES

(No. 10429—Alderman, 45th Ward—M. H. F.—March 3, 1941.)

The city has no power to tax, license or regulate private employment agencies.

Citation: Clark Teachers' Agency v. City of Chicago, 220 Ill. App. 319 (1920).

CIGARETTE LICENSE FOR STORE WITH SEVERAL SELLING LOCATIONS

(No. 10434—Superintendent, Bureau of License—M. H. F.—March 10, 1941.)

A department store conducted by a single owner and catering to but one clientele, with all departments connected and open to all customers, need purchase only one cigarette dealer's license, notwithstanding that cigarettes are sold in two locations on the first floor, one location in the basement, and one location on the ninth floor, and the store has several entrances on different streets.

Citations:
Ordinances: Mun. Code: 101-4, 147-2, 178-9 to 178-20.
Other references: Op. Corp. Coun. (1923-24), pp. 395, 781.
18 Op. Corp. Coun. (1929-35), p. 507 (No. 8199), p. 513 (No. 7878), p. 514 (Nos. 6592, 8130).
19 Op. Corp. Coun. (1936-37), p. 124 (No. 9590).

EXEMPTION FROM MECHANICAL VENTILATION INSPECTION FEES.

(No. 10435—City Collector—M. H. F.—March 10, 1941.)

The Municipal Code does not provide for any exemptions, even for charitable institutions, from the payment of fees prescribed for the annual inspection of mechanical ventilating systems.

Citations:
Ordinances: Mun. Code: 46-2 to 46-7, 46-33, 46-40, 46-41, 46-47.
Cases: People v. Collins, 351 Ill. 551 (1933).
Great Northern Refining Co. v. Jeffris Lumber Co., 308 Ill. 342 (1923).

COMPUTATION OF FILLING STATION LICENSE FEE

(No. 10510—Superintendent, Bureau of License—M. H. F.—July 24, 1941.)

When gasoline tanks are located on the premises of an airline company but are disconnected from those tanks used for resales to customers and are used exclusively for refueling the corporation's airplanes, they would not be included in determining the storage capacity for purposes of computing the filling station license fee. The only containers subject to the fee are those containers kept on the premises and used in the filling station business.

Citation: Mun. Code: 127-1, 127-2, 127-4.

LICENSING OF ICE CREAM PARLOR PERMITTING DANCING

(No. 10518—City Collector—M. H. F.—August 11, 1941.)

An ice cream parlor where food or drink is served and where patrons may dance to the music of a "juke box" without any admission charge therefor is subject to the public place of amusement license provisions rather than to the amusement license provisions.

Citations:
Ordinance: Mun. Code: 104.
Case: City of Chicago v. Green Mill Gardens, 305 Ill. 87 (1922).

REVOCATION OF REAL ESTATE BROKERS' LICENSES

(No. 10530—Council Committee Investigating Living Costs—A. F. G. —September 9, 1941.)

The mayor has power to revoke any license issued pursuant to the city code for good and sufficient cause and thus he may revoke licenses of real estate brokers who are guilty of violating city ordinances.

Citation: Mun. Code: 101-27.

CONSTRUCTION OF DRIVEWAY UNDER OLD PERMIT

(No. 10536—C. N.—September 26, 1941.)

An operator of a parking lot must apply for a permit to construct a driveway on the premises, notwithstanding that a former operator had obtained such permit and had never exercised it.

Citation: Mun. Code: 33-17.

LICENSING COLD STORAGE WAREHOUSES

(No. 10544—Committee on License—M. H. F.—October 21, 1941.)

Although the city may inspect the buildings, equipment, and perhaps the contents of cold storage warehouses, it is doubtful whether it may license cold storage warehouses or impose an occupational tax on the privilege of engaging in such business.

Citations:
Statutes: Cities and Villages act, art. V, pars. 53, 66, 78.
IRS '41, 56½: 80 to 93.
Ordinances: Code '22: 2027 to 2036.
Code '31: 3055 to 3064.
Mun. Code: 114-1 to 114-10.
Case: City of Chicago v. Union Ice Cream Co., 252 Ill. 311 (1911).
Other references: 3 Op. Corp. Coun. (1907), p. 332.
6 Op. Corp. Coun. (1912), p. 1119.
8 Op. Corp. Coun. (1915), p. 298.
16 Op. Corp. Coun. (1928), p. 531 (No. 6189½).
17 Op. Corp. Coun. (1928), p. 18 (No. 6199).
18 Op. Corp. Coun. (1931), p. 364 (No. 7140).

LICENSE FOR TALKIE MOVIE MACHINE

(No. 10591—Commissioner of Police—M. H. F.—January 29, 1942.)

A class IV amusement license is required for the operation of coin-operated talkie and motion picture machines in addition to police permit.

Citations: Mun. Code: 155-8 to 155-25.
Mun. Code: 104-2.

PARKING LOTS OPERATED BY RELIGIOUS OR CHARITABLE INSTITUTIONS

(No. 10642—Medical Center Commission—F. V. M.—May 26, 1942.)

Parking lots owned by a charitable or religious institution and used for the accommodation of parishioners or members of and visitors to such institution, whether a fee is charged or not, are subject to taxation. If a parking fee is charged, they are also subject to payment of the city's license fee.

Citations: IRS '41, 91: 133 (Medical Center District act).
IRS '41, 120: 500 (2), 500 (7) (Revenue act).

LICENSING OF SPECIAL POLICEMEN

(No. 10646—Commissioner of Police—C. P. H.—June 10, 1942.)

Individuals employed by owners of property, packing companies, trust companies and banks to guard or protect buildings, structures, premises, property and persons are required to be licensed as special policemen regardless of whether or not they are licensed by the state of Illinois as private detectives.

Persons employed by patrol services to do patrol, beat or post watch service covering certain designated streets and areas, who wear uniforms, badges or stars, are required to be licensed as special policemen but are prohibited from carrying guns concealed on their persons while on the public streets.

Persons, watch services and organizations who furnish for a fee men in and out of uniform to guard and protect buildings, structures, premises, property and persons are not required to be licensed.

Citations:
Statutes: IRS '41, 24. 23-1, 23-78, 23-105.
IRS '41, 38: 608b to 608.1.
Ordinance: Mun. Code: 173-1, 173-2, 173-3, 173-11.
Cases: City of Chicago v. Union Ice Cream Co., 252 Ill. 311 (1911).
People v. Jerry, 377 Ill. 493 (1941).
Komorowski v. Boston Store, 263 Ill. App. 88 (1931).
Other references: 9 Op. Corp. Coun., p. 1030.
11 Op. Corp. Coun., p. 159.
15 Op. Corp. Coun., p. 714.
18 Op. Corp. Coun., p. 106 (Nos. 8891, 8141).
18 Op. Corp. Coun., p. 107 (No. 8715).
19 Op. Corp. Coun., p. 28 (No. 9500).
20 Op. Corp. Coun., p. 21 (No. 9793).

USE OF CITY SEAL ON ADVERTISEMENT OF SALE

(No. 10659—City Clerk—J. F. G.—June 26, 1942.)

An advertiser may use the city license to conduct a sale, together with the reproduction or facsimile of the city seal or official signature of a city officer thereon, for advertising purposes.

LICENSE PERIOD FOR FIRE SALE

(No. 10687—City Clerk—A. F. G.—September 22, 1942.)

The Fraudulent Sales Act restricts to a period of three months any license to conduct a "fire sale." Advertising such a sale after the three month period is *prima facie* a violation of the Act which should be prosecuted by the State's Attorney.

Citations:
Statute: IRS '41, 14: 5; 121½: 2.

E. REFUND OF LICENSE FEES

LICENSE FEE REFUND AFTER ORDINANCE REPEAL

(No. 10294—Chairman, Committee on Finance—M. H. F.—June 20, 1940.)

A corporation which pays a license fee for the installation of oil burner tanks after the requirement for such license was repealed, is not entitled to a refund because the payment was made voluntarily and not under both protest and duress.

Citations:
Ordinances: Code '31: 2670.
Coun. J. (1938), p. 6432, sec. 401.14.
Mun. Code: 43-18.
Cases: Yates v. Royal Insurance Co., 200 Ill. 202 (1902).
Rhode v. City of Chicago, 254 Ill. App. 590 (1929).
Holder v. City of Galena, 19 Ill. App. 409 (1885).

Opinion No. 10331 of August 13, 1940 to the Committee of Finance discusses the same problem.

REFUND OF CIGARETTE DEALER'S LICENSE FEE

(No. 10303—Chairman, City Council Finance Committee—M. H. F.—July 2, 1940.)

A person who procured a cigarette dealer's license but not a wholesale tobacco dealer's license is not entitled to a refund on the difference between the amount of the two licenses, even though he did not sell cigarettes at retail during the year.

Citations: Mun. Code: 101.12.
Code '31: 2913.

LICENSE FEE REFUND FOR UNUSED PERIOD

(No. 10333—City Comptroller—M. H. F.—August 14, 1940.)

Rejection of an application for a retail liquor license does not entitle the applicant to refund of the fee paid, when claimant has begun operation of business for which the license is sought.

Discontinuance of the sale of cigarettes, before expiration of license issued therefor, does not entitle licensee to a partial refund of fee paid.

Citations: Coun. J. (1940-41), pp. 2779, 2830.
Mun. Code: 101-9, 101-12, 178-12, 178-14.

REFUND OF LIQUOR LICENSE AND PUBLICATION FEES

(No. 10376—Chairman, Committee on Finance, City Council—M. H. F. —December 4, 1940.)

If an application for a retail liquor dealers' license is not approved and publication has been made, the fee paid to defray the cost of publication should not be refunded. The license fee paid in advance, however, should be refunded upon recommendation of the collector and approval of the comptroller, if the applicant has not engaged in the retail liquor business during any part of the period for which the license was sought.

Citations: Mun. Code: 109-9, 147-3.

REFUND OF AMUSEMENT LICENSE FEES

(No. 10430—Chairman, Committee on Finance—M. H. F.—March 4, 1941.)

Promoters of bicycle races are not entitled to a refund of license fees on the basis that refunds were made to the promoters of other sports events, the proper classification of which was doubtful, since there was no doubt as to the classification of bicycle races in the amusement ordinance.

Citations: Code '22: chap. VIII.
Coun. J. (1930-31), p. 4894.

LICENSED PREMISES TAKEN OVER BY THE FEDERAL GOVERNMENT

(No. 10692—Bureau of License—M. H. F.—October 2, 1942.)

No rebate of a license fee is authorized under present ordinances in cases where businesses must be discontinued by reasons of the premises being taken over by the federal government. (This section was amended Coun. J. 12-3-42, p. 7895.)

Citations:
Ordinance: Mun. Code: 101-12.

VEHICLES OPERATED IN CONNECTION WITH DEFENSE PLANT

(No. 10698—Committee on Finance—M. H. F.—October 30, 1942.)

Vehicles owned by private corporations or individuals are not exempt from payment of city wheel tax license fees even though they

are used exclusively in connection with the business of building a defense plant financed by the Defense Plant Corporation.

Citations:
Ordinance: Mun. Code: Ch. 29; 101-12.

STATUS OF CHARITABLE ORGANIZATION WHICH MAKES SERVICE CHARGES

(No. 10706—Commissioner of Buildings—A. F. G.—November 17, 1942.)

A charitable institution not organized for gain or profit retains its charitable nature notwithstanding it may make charges for its services. As such it is exempt from payment of inspection fees under section 46-7 of the Code.

Citations:
Ordinance: Mun. Code: 46-7.
Case: Peo. v. Y. M. C. A. of Chicago, 365 Ill. 118 (1937).
Other reference: 18 Op. Corp. Coun., p. 528 (No. 7395).

FEES PAID UNDER ORDINANCE LATER DECLARED INVALID

(No. 10708—Committee on Finance—M. H. F.—November 17, 1942.)

A person who voluntarily pays license fees under an ordinance afterwards declared invalid is not entitled to the return of the fees.

Citations:
Cases: Rath v. City of Chicago, 207 Ill. App. 117 (1917).
City of Chicago v. Klinkert, 94 Ill. App. 524 (1900).
Arms v. City of Chicago, 251 Ill. App. 532 (1929).
Rohde v. City of Chicago, 254 Ill. App. 590 (1929).
Standard Oil Co. v. Bollinger, 337 Ill. 353 (1929).
Yates v. Royal Ins. Co., 200 Ill. 202 (1902).
City of Chicago v. Ingersoll Steel & Disc Division of Borg-Warner Corp., 371 Ill. 183 (1939).
Other references: 18 Op. Corp. Coun., p. 464 (No. 6815).
20 Op. Corp. Coun., p. 164 (No. 10096).

CHAPTER VII

BUILDING AND ZONING

A. BUILDINGS

SPRINKLERS FOR SUBSURFACE GARAGES

(No. 10177—Division Fire Marshal—A. F. G.—January 15, 1940.)

A garage having a driveway or ramp leading from the street level down to a lower floor level more than eight feet below the established street grade on which automobiles are parked, is a class 1 garage located in a basement and must be equipped with the automatic sprinklers required for that class.

Citation: Mun Code: 52-1, 52-2, 52-41.

EXIT LIGHTING REQUIREMENTS FOR SINGLE DWELLINGS

(No. 10184—R. N.—January 26, 1940.)

The general exit lighting requirements of the building provisions of the Municipal Code of Chicago apply to single dwellings.

Citations: Mun. Code: 66-1.

UNCOMPLETED AND UNSIGHTLY BUILDINGS AS NUISANCES

(No. 10204—Chairman, Council Subcommittee on Building Code Division—A. F. G.—February 26, 1940.)

Buildings which are in such dilapidated condition as to endanger the health or lives of the citizens of the city are nuisances, and ample power is vested in the city council to abate such nuisances.

Buildings, however, which are merely unsightly do not constitute a nuisance and the city council has no authority to order their demolition. An uncompleted building which is structurally sound and sanitary may not be declared a nuisance simply because it is an eyesore. Where a nuisance is not a building itself, but the use to which it is put, the city cannot declare the building a nuisance and order its removal, but rather the cause of the offense may be ordered to be removed.

Citations:
Cases: City of Bushnell v. C. B. & Q. Ry. Co., 359 Ill. 391 (1913).
Commonwealth v. Boston Advertising Co., 188 Mass. 348, 74 N. E. 601 (1905).

Nazworthy v. Sullivan, 55 Ill. App. 48 (1894).
Chicago v. Union Stock Yards Transit Co., 164 Ill. 26 (1896).
1st National Bank v. Sarlis, 129 Ind. 201 (1891).
Dupree v. Brunswick, 82 Ga. 727 (1889).
Miller v. Burch, 32 Tex. 208 (1869).
Hennessey v. St. Paul, 37 Fed. 565 (1889).
Other reference: Op. Corp. Coun., Vol. XVIII, p. 384; Ibid. Vol. XIX, p. 64.

COOLING SYSTEMS FOR HOSPITALS

(No. 10249—President, Board of Health—D. L. L.—April 18, 1940.)

The construction of a cooling system for the delivery rooms in a hospital must comply with the building provisions of the Code, which require that facilities be provided for the installation of mechanical ventilation equipment.

Citations:
Ordinance: Mun. Code: 81-2, 81-7, 81-16.
Cases: Hartman v. City of Chicago, 282 Ill. 511 (1918).
City of Chicago v. Wonder Heat System, 345 Ill. 496 (1931).
Klever Karpet Kleaners v. City of Chicago, 323 Ill. 368 (1926).

INSTALLATION OF HOUSE NUMBERS BY CITY

(No. 10300—Commissioner of Public Works—A. F. G.—June 28, 1940.)

The city has no legal right to enter upon private property to erect house or street numbers and is under no duty to erect such numbers. Nor does the city have any right to charge property owners for placing house numbers on their buildings.

Citation: Mun. Code: 30-11.

ABATEMENT OF UNSAFE BUILDINGS

(No. 10321—Chairman, City Council Committee on Buildings and Zoning—A. J. R.—August 1, 1940.)

The city council may, by ordinance, condemn unsafe or insanitary buildings as public nuisances. In cases where such buildings suddenly become so immediately dangerous to public health or safety, as to require their immediate demolition, and the owners, after reasonable notice as required by law, refuse to remove the same, it may provide for the abatement thereof by city authorities.

Except in case of such emergency, it would be advisable to institute equity proceedings to effect the abatement, in order to obviate any question of the validity of the council's definition of a nuisance

and to avoid the possible assertion of liability against the city and its officials. The court, in its decree, should make the necessary fact findings and declaration that the building is a public nuisance and its demolition is a necessary means of abatement. The law department should be directed to institute and conduct the necessary proceedings.

Citations:
Statute: IRS '39, 24: 65.61.
Cases: People v. City of Chicago, 280 Ill. 576 (1917).
City of Bushnell v. Chicago, B&Q RR., 259 Ill. 391 (1913).
City of Chicago v. Weber, 246 Ill. 304 (1910).
Sings v. City of Joliet, 237 Ill. 300 (1908).
Wamesit Power Co. v. Allen, 120 Mass. 352 (1876).
People v. Huls, 355 Ill. 412 (1934).
City of Huron v. Bank of Volga, 8 SD 449 (1896).
City of Pana v. Central Washed Coal Co., 260 Ill. 111 (1913).
Laugel v. City of Bushnell, 197 Ill. 20 (1902).
The People ex rel. v. City of Chicago, 260 Ill. 150 (1913).
Columbian Athletic Club v. State, 40 NE (Ind.) 914 (1895).
Other references: McQuillin, Municipal Corporations, v. 2 (revised), p. 374.
People v. Iraelite House of David, 246 Mich. 606, 225 NW 638 (1929).
Village of Louisville v. Webster, 108 Ill. 414 (1884).

PAINTING OF UNSIGHTLY BUILDING WALLS

(No. 10350—Chairman, Sub-committee on Buildings, Code Revision—J. F. O'M. & A. F. G.—October 2, 1940.)

An ordinance requiring the owner of walls adjacent to a wrecked building to fill in, smooth and paint such walls when they are otherwise structurally sound, would be invalid as an improper exercise of the police power.

Citations:
Cases: Grossman v. Galveston, 122 Tex. 314 (1923).
Haller Sign Works v. Physical Culture Training School, 249 Ill. 436 (1911).
City of New York v. Dassori, 21 NY App. Div. 348 (1897).
Other reference: McQuillan, Municipal Corporations (2d ed.), v. 3, sec. 943.

CAPACITY OF BUSINESS OFFICES

(No. 10364—Alderman, 40th Ward—A. F. G.—November 7, 1940.)

The capacity of every room or space not equipped with fixed seats shall be determined by dividing the area of such space in square feet by 100. The quotient is the number of persons who may legally occupy such space. Occupation of any business office by more persons than so provided would be a violation of such maximum limit.

Citation: Mun. Code: 62-3, 62-10.

SHORING-UP OF UNSAFE BUILDING

(No. 10385—Commissioner of Buildings—A. J. R.—December 11, 1940.)

If a building is in so unsafe a condition as to endanger life, the commissioner of buildings should either prohibit its occupancy or demolish it. Under the present ordinances, there is no authority for shoring-up or repairing the building.

Citations:
Ordinance: Mun. Code: 13-22, 13-23.
Case: Sings v. City of Joliet, 237 Ill. 300 (1908).

RECEIVER TO DEMOLISH BUILDING

(No. 10398—Chairman, Subcommittee on Razing of Buildings—A. F. G.—January 6, 1941.)

In suits by the state's attorney to foreclose liens of delinquent taxes and to petition the appointment of receivers, such appointments are for the purpose of preventing waste and maintaining the premises in good condition. Therefore, the city could not properly intervene in such suits to have a receiver appointed when demolition, and not preservation, of a building is desired.

Citations:
Constitution: Illinois. art. IX.
Statute: Revenue Act of 1939, secs. 216, 216a.
Other reference: 20 Op. Corp. Coun. (1938-39), p. 166 (No. 10099).

COMPELLING INSPECTION OF PRIVATE PREMISES

(No. 10417—Commissioner of Buildings—A. J. R.—February 11, 1941.)

In the absence of a specific ordinance, the department of buildings has no power to compel owners of buildings to make an examination to determine the true condition of the building with the ultimate view of permitting it to remain occupied or to order its demolition, and similarly, the department has no power forcibly to enter upon private premises or remove a part of the building to ascertain such facts.

Citation: Op. Corp. Coun. (Dec. 11, 1940) to Commissioner of Buildings.

FIRE RESISTIVE REQUIREMENTS FOR BUILDING USED FOR STORING FLAMMABLE LIQUIDS

(No. 10432—Fire Commissioner—M. H. F.—March 7, 1941.)

Where a class I flammable liquid, such as benzol, is used in a proposed manufacturing process and the total quantity stored or used exceeds six hundred gallons, the building used for the storage and handling of the liquid is required to be one constructed in accordance with the four hour fire-resistive requirements of the code. There is no provision for the exemption of a so-called one-purpose building from these requirements.

Citations: Mun. Code: 51-2, 51-51, 68-20, 82-92.

MINIMUM LOT REQUIREMENTS FOR DWELLINGS

(No. 10458—Chairman, Subcommittee on Re-zoning—L. V. R. & D. H. N.—April 16, 1941.)

An ordinance requiring that two 25 foot lots be combined as a minimum parcel upon which dwellings may be constructed without regard to the size of the building, would not be legal since this requirement does not appear to have a direct bearing on the public health, comfort, safety, morals or welfare of the city's inhabitants.

Citation: People ex rel. Schimpff v. Norvell et al., 368 Ill. 325 (1938).

REQUIRING LIGHTS ON REAR PORCHES

(No. 10539—Alderman, 3rd Ward—A. F. G.—October 8, 1941.)

The city council could not legally require all owners of residential buildings of three or more stories to keep lights burning at night on the rear porches of such buildings.

Citations:
Ordinance: Code '11: 1422.
Case: Stoessand v. Frank, 283 Ill. 271 (1918).

DEMOLITION OF UNSAFE BUILDING OWNED BY INSANE PERSON

(No. 10606—Commissioner of Buildings—M. A. G.—February 25, 1942.)

The procedure to abate a nuisance where title to a structurally unsafe building is in a person adjudged insane may be (1) by razing the building if imminently dangerous or (2) by petition for appointment of a conservator for the purpose of service of notice.

RETROSPECTIVE EFFECT OF BUILDING CODE

(No. 10627—Division Marshal in Charge of Fire Prevention—A. F. G. —April 2, 1942.)

The building provisions of the code generally are intended only for prospective operation and not for retrospective effect.

The city council has the power to pass building ordinances retrospective in effect.

Citations: 43 Corpus Juris, sec. 921.
2 Op. Corp. Coun., p. 696.

EFFECT OF FEDERAL RESTRICTIONS OF BUILDING CONSTRUCTION ON ISSUANCE OF BUILDING PERMITS

(No. 10630—Commissioner of Buildings—A. F. G.—April 21, 1942.)

The commissioner of buildings cannot refuse to issue a building permit where plans and specifications comply with the ordinances on the ground that there is a federal order restricting the construction of buildings not essential to war effort.

DEMOLITION OF UNSAFE BUILDINGS

(No. 10657—Subcommittee on Demolition—H. M. A.—June 25, 1942.)

The city has power to demolish frame or wooden buildings which, by reason of damage by fire or lapse of time, have become fire hazards.

Citations:
Statute: IRS '41, 24: 23-71.
Cases: Village of Louisville v. Webster, 108 Ill. 414 (1884).
Patterson v. Johnson, 214 Ill. 481 (1905).
Sings v. City of Joliet, 237 Ill. 300 (1908).
City of Chicago v. Weber, 246 Ill. 304 (1910).
City of Bushnell v. C. B. & Q. R. R. Co., 259 Ill. 391 (1913).
People v. City of Chicago, 280 Ill. 576 (1917).

ENCLOSED STAIRWELLS IN EXISTING BUILDINGS

(No. 10676—Division Marshal in Charge of Fire Prevention—A. F. G. —August 18, 1942.)

The provisions of the Building Code which require that stairwells be constructed with enclosing walls is a prospective requirement and does not apply to buildings in existence at the time of the passage thereof.

Citations:
Ordinance: Mun. Code: Chap. 51; Chap. 60; Chap. 61.
Other reference: 43 Corpus Juris, Sec. 921.

EMERGENCY PLUMBING STANDARDS FOR DEFENSE HOUSING

(No. 10704—Superintendent of Sewers—A. F. G.—November 16, 1942.)

For the duration of the war the provisions of the "Emergency Plumbing Standards for Defense Housing" supersede general ordinances in conflict therewith.

PROCEDURE WHERE USE OF BUILDING CONSTITUTES A NUISANCE

(No. 10722—Committee on Housing—A. F. G.—December 14, 1942.)

Where a nuisance is not in the building itself but in the use to which it is put, the authorities cannot declare the building a nuisance and order its removal, but the cause of the offense must be removed.

The mere declaration in an ordinance that a building is a nuisance is not enough—such statement must be borne out by the facts.

Citations:
Cases: Sings v. City of Joliet, 237 Ill. 300 (1908).
Nazworthy v. City of Sullivan, 55 Ill. App. 48 (1894).
Chicago v. Union Stock Yds. & Transit Co., 164 Ill. 224 (1896).
First Natl. Bank v. Sarlis, 129 Ind. 201 (1891).
Dupree v. Brunswick, 82 Ga. 727 (1889).
Miller v. Burch, 32 Tex. 208 (1869).

B. FRONTAGE CONSENTS

FRONTAGE CONSENTS FOR UNDERTAKING ESTABLISHMENT

(No. 10221—Board of Health—E. J. K.—March 16, 1940.)

Frontage consents are necessary for the operation of an undertaking establishment in any block or street in which more than one-third of the buildings on both sides of the street are used exclusively for residential purposes. Where there are fourteen buildings in a block, six of which are used exclusively for residential purposes, frontage consents are necessary to operate an undertaking establishment in that block.

Citations: Mun. Code: 181-3.

FRONTAGE CONSENTS UPON CHANGE IN OWNERSHIP

(No. 10247—President, Board of Health—A. C.—April 18, 1940.)

New frontage consents are not needed to continue to conduct a home in a residential block upon a change of ownership, if there is no lapse of time in the operation of the establishment. Nor need new frontage consents be secured if the premises is changed to a home from a hospital or nursery.

Citations:
Ordinance: Mun. Code: 136-6.
Other reference: 18 Op. Corp. Coun. 578 (No. 6771).

"BUILDINGS" INTERPRETED FOR FRONTAGE CONSENTS

(No. 10337—President, Board of Health—A. F. G.—August 22, 1940.)

For purposes of the frontage consent provisions in the trailer camp ordinance, an adjoined building having a party wall constitutes two buildings, but garages and barns on rear of lots are not separate buildings.

Citations:
Ordinances: Mun. Code: 179-5, 194A-2(f).
Case: People v. Village of Oak Park, 266 Ill. 365 (1915).

FRONTAGE CONSENTS FOR UNDERTAKER ON BOULEVARD

(No. 10347—E. J. K.—September 25, 1940.)

No morgue or undertaking establishments may be constructed or maintained in the 300 block of Ashland avenue without obtaining frontage consents, because Ashland avenue is a boulevard at this point. The use of the buildings in the particular block is immaterial when a boulevard is involved.

Citations: Coun. J. (1886-87), p. 249, secs. 1, 2, 3.
Mun. Code: 181-3.

FRONTAGE CONSENTS FOR TRAILER CAMP

(No. 10473—President, Board of Health—A. F. G. & J. F. O'M.—May 13, 1941.)

An application for a license for a trailer camp in a block zoned for commercial purposes need not be accompanied by frontage consents unless more than one-half of the buildings in the block are dwelling houses or apartments. Where there are only two buildings on the

block other than a corner building fronting on another street, one being a dwelling and the other a store, frontage consents are not necessary, since the one dwelling does not constitute more than half of the buildings in the block.

Citations:
Ordinances: Mun. Code: 102-1, 179-1, 179-3, 179-5, 179-7 to 179-18.

FRONTAGE CONSENTS BY AGENT

(No. 10497—Commissioner of Public Works—A. J. B.—June 20, 1941.)

Frontage consent petitions must, in the case of corporate owners, be signed by a duly authorized agent. Evidence of the agent's authority must come from the owner of the property, rather than from the lessee.

Citations:
Ordinance: Mun. Code: 127-5.
Case: Merchant's National Bank v. Nichols & Shepherd Co., 223 Ill. 41 (1905).

PARKING LOT FOR PRIVATE USE

(No. 10595—Alderman, 50th Ward—M. H. F.—February 5, 1942.)

A parking lot for private use, where no fees are charged, does not require frontage consents for establishment as it is not a garage within the meaning of section 59-9 of the code.

Citations:
Ordinance: Mun. Code: 59-9, 156-18.
Case: Crerar Clinch Coal Co. v. City of Chicago, 341 Ill. 471 (1930).

FRONTAGE CONSENTS FOR CHANGE IN USE

(No. 10670—Commissioner of Buildings—L. V. R.—July 27, 1942.)

Where frontage consents are required for the operation of certain occupations included in a class of businesses enumerated by ordinance, frontage consents secured for a particular business do not permit the use of the premises for another of said businesses. Frontage consents must be secured for any new and different use.

Citations:
Ordinance: Mun. Code: 102-3.

UNDERTAKING ESTABLISHMENT ON STREET ON WHICH TROLLEY BUSSES OPERATE

(No. 10728—Board of Health—C. P. H.—December 21, 1942.)

Frontage consents must be obtained for the establishment of an undertaking business upon a street upon which trolley busses are operated by the Chicago Transit Company, as such operations do not constitute such street a street upon which street cars are operated within the meaning of the language of Section 181-3 of the Code.

Citations:
Ordinance: Mun. Code: 181-3.
Other references: 18 Op. Corp. Coun., p. 587 (No. 8680).
20 Op. Corp. Coun., p. 144 (No. 10052).

C. ZONING

ZONING CLASSIFICATION OF POULTRY KILLING ESTABLISHMENT

(No. 10275—Commissioner of Buildings—L. V. R. & D. H. N.—May 20, 1940.)

The maintenance of an establishment devoted exclusively to the killing of poultry is within the zoning classification of a C-3 use, but when such killing is conducted in conjunction with, and incidental to, the retail sale of poultry, then the activity comes within the C-1 use classification.

Citation: Mun. Code: 194A-8 (Zoning ordinance).

DAMAGES FROM BUILDING PERMIT REVOCATION

(No. 10279—Chairman, Committee on Finance—C. N.—May 25, 1940.)

The city council should not allow a claim for damages resulting from the revocation of permit erroneously issued for construction of a business building in a residential district. Claimant's legal redress was to appeal to the courts for a review of the decision of the zoning board of appeals.

Citation: IRS '39, 24: 68.

AMENDMENT OF ZONING ORDINANCE

(No. 10339—Commissioner of Buildings—A. F. G.—August 27, 1940.)

An ordinance to amend a zoned district, passed by the city council without a hearing before the committee on buildings and zoning after due notice and publication, is invalid.

Citations:
Statute: Illinois Zoning act, sec. 4.
Ordinance: Mun. Code: 194A-30 (Zoning ordinance).

ZONING OF RECLAIMED PARK LAND

(No. 10344—Chief Engineer, Chicago Plan Commission—J. F. G.—September 16, 1940.)

Land devoted to park use is not indicated as such on the zoning maps. Public parks and playgrounds, including park extensions upon reclaimed submerged lands, may be identified on the zoning maps by the symbol for residence or apartment districts depending upon their location and be zoned as such although limited for park purposes only.

Citations:
Statute: IRS '39, 24: 66.
Ordinance: Zoning ordinance, secs. 4(b), 5, 10(d), 23(f).

REVERSAL OF BUILDING COMMISSIONER BY ZONING BOARD OF APPEALS

(No. 10433—City Collector—L. V. R. & D. H. N.—March 7, 1941.)

Application for a license to conduct a business, which has been denied by the commissioner of buildings because of non-conformance with the zoning requirements, should be granted to the applicant by the city collector if the zoning board of appeals has reversed the decision of the commissioner of buildings and has approved the application.

Citations: Mun. Code: 101-8, 194A-29.

CHANGING ZONING DISTRICTS

(No. 10446—Chairman, Committee on Building & Zoning—L. V. R. & D. H. N.—March 25, 1941.)

The amendment of the zoning ordinance changing a certain described area from a commercial district to a manufacturing district will not affect any property other than that described.

PUBLICATION OF AMENDMENT TO ZONING ORDINANCE

(No. 10613—City Clerk—J. F. G.—March 2, 1942.)

Publication *verbatum* of an ordinance to amend the Zoning Ordinance is not required.

Publication in pamphlet form on authorization of the city council is sufficient.

Citation: Revised Cities and Villages act, secs. 73-8, 10-3.

ZONING REGULATIONS OF MEDICAL CENTER COMMISSION

(No. 10642—Medical Center Commission—F. V. M.—May 26, 1942.)

The Medical Center Commission is empowered to pass and enforce zoning ordinances and to condemn property. The commission cannot otherwise interfere with the right of any person or institution to acquire or use property for any lawful purpose within the district.

Citation: IRS '41, 91: 127, 132 (Medical Center District act).

TANK CAPACITY FOR STORAGE OF VEGETABLE OIL

(No. 10654—Commissioner of Buildings—J. F. G.—June 19, 1942.)

There is no limitation on the capacity of tanks for the storage of vegetable oil for use in the manufacture of food products.

Citation: Chicago Zoning Ordinance, secs. 8, 9, 11.

EFFECT OF NEW ZONING ORDINANCE ON ACTION OF BOARD OF APPEALS

(No. 10693—Board of Appeals, Zoning—J. F. G.—October 6, 1942.)

Action of the Board of Appeals pending passage of the ordinance to revise the Zoning Ordinance is governed by the ordinance in effect at the time action is taken. A variation ordinance inconsistent with the new ordinance which becomes effective before or on the same day as the new ordinance, may authorize a non-conforming use under the new ordinance.

Citations:
Case: Western Theol. Seminary v. Evanston, 325 Ill. 511 (1927).

CHAPTER VIII

RELIEF

TAX LEVY FOR RELIEF PURPOSES

(No. 10182—City Comptroller—J. F. G.—January 23, 1940.)

For the year 1939 the maximum tax rate for the relief and support of poor and indigent persons was three mills on each dollar of the total equalized value of all taxable property within the city.

Pursuant to a 1939 amendment, the maximum tax rate for relief purposes for the year 1940 and subsequent years is such as will produce a sum not in excess of $6,000,000.00.

Citations:

Statute: Ill. Laws (1939) p. 410.
Ill. Laws (1937) p. 402.

Cases: People v. C. & N. W. Ry. Co., 340 Ill. 102 (1930).
People v. Baum, 367 Ill. 249 (1937).

APPROVAL OF RELIEF EXPENDITURES FOR WPA PROJECT

(No. 10190—Commissioner of Public Works—J. F. G.—February 1, 1940.)

The ordinance of February 7, 1940, authorizing the commissioner of relief to approve or disapprove in advance any property expenditures out of any monies transferred from the Emergency Relief Fund to be used for work project purposes, is valid and legal.

Since the passage of this ordinance, neither the commissioner of public works nor any other officer is authorized to contract for any expenditure out of the money so transferred from the Emergency Relief Fund or to pay out such money on account of any obligation incurred unless the expenditure has been approved by the commissioner of relief.

Citations:

Statutes: IRS '39, 23: 394.
IRS '39, 24: 65.101, 65.102, 123.
IRS '39, 107:17a.

Ordinance: Mun. Code: 21-5, 21-6.
Spec. Ord. of Feb. 7, 1940.

WAIVER OF PLUMBERS' LICENSE REQUIREMENTS

(No. 10222—Board of Examiners of Plumbers—A. F. G.—March 18, 1940.)

The board of examiners of plumbers has no power to waive any of the provisions of the city ordinance relating to the licensing of journeymen plumbers even for relief persons.

JOURNEYMAN PLUMBER'S CERTIFICATES TO PAUPERS

(No. 10281—Chairman, Sub-committee on Finance—A. F. G.—May 28, 1940.)

The city council may enact an ordinance authorizing the board of plumber examiners to issue temporary and limited certificates to paupers authorizing the holder to engage in the occupation of journeyman plumber only on WPA projects when certified from the relief rolls.

Citations:

Statutes:	**IRS '39, 24: 83, 529.**
	IRS '39, 33: 5.
	IRS '39, 34: 163b.
	IRS '39, 37: 416.
	IRS '39, 38: 730, 766, 769a.
	IRS '39, 107: 1 to 34.
Ordinance:	**Mun. Code: 162-6.**
Case:	**City of Chicago v. Rhine, 363 Ill. 619 (1936).**

REPAYMENT OF ADVANCES TO THE RELIEF FUND

(No. 10454—City Comptroller—J. F. G.—April 9, 1941.)

The proceeds of 1939 taxes levied for relief may be used to reimburse the city funds from which advances were made to the relief fund in prior years, inasmuch as the city council authorized such use of idle funds.

The application of the proceeds of the 1939 tax levy to the reduction of loans made to the city relief fund, should not affect the allocation of money from the Illinois emergency relief fund to the Chicago Relief Administration. If the city relief fund is encumbered by obligations lawfully incurred, the amount of the encumbrance is not legally available for the relief of needy persons and should be deducted from the amount estimated to be available from the proceeds of the 1939 tax before computing the monthly prorated share of funds legally available from said taxes to determine the amount to be allocated to the city from the State emergency relief fund.

Citations:
Statute: IRS '39, 23: 393 to 395.
Other references: Op. Ill. Atty. Gen., Jan. 18, 1938.
20 Op. Corp. Coun. (1938-39), p. 200 (No. 9791).

OPINION OF FOREGOING SYNOPSIS

With your letter of March 20, 1941 you submitted copies of correspondence between the Chicago Relief Administration and your office relative to the application of 1939 taxes levied for poor relief, from which it appears that the right of the fiscal officers of the city to apply the proceeds of the 1939 tax levy, after redemption of tax warrants, to reimbursement of other city funds from which advances were made to the relief fund during the years 1936, 1937 and 1939 is questioned. In the correspondence reference is made to an opinion of the attorney general of the state of Illinois, dated January 18, 1936, addressed to the executive secretary of the Illinois Emergency Relief Commission in which it is said:

> "* * * that each year's levy which before collection is being used as an 'available resource,' must stand as a unit and when unpaid obligations incurred by that unit for the particular year equal or exceed that portion of the levy for that year used in the computation, this levy is then no longer a resource and should not be used in the computation.
>
> "In other words, this statute contemplates the use of resources,—not liabilities, and the moment the expenditure for the year exceed that portion of the levy for a particular year, used in the computation, it is no longer a resource, * * *. Hence, when a unit, at the end of its fiscal year, shows a deficit, such deficit should be disregarded in computing the allocation for state aid for the current year because the levy for that particular year has long since ceased to be an available resource."

The statute referred to in the opinion of the attorney general is, no doubt, "An Act to provide for relief of needy persons," approved February 6, 1932, as amended. (Ill. Rev. Stat. 1939, p. 349.) This act created the Illinois Emergency Relief Commission and provides for the distribution of funds in cooperation with local relief agencies. It provides for the allocation of money from the emergency relief fund to local governmental units charged with the duty of providing for the relief of needy persons. Allocations are required to be made monthly according to the needs of the local governmental unit after deducting from the amount necessary for relief in that unit a monthly pro rated share of funds legally available from the taxes required to be levied by that unit as a condition of receiving state funds for relief.

The opinion of the attorney general relates to the computation of the amount required to be allocated monthly to the local governmental units from the emergency relief fund. While we are constrained to disagree with the attorney general in his interpretation of the Illinois Emergency Relief Act, his opinion does not govern the fiscal operations of the city. These are governed by the provisions of the Cities and Villages Act relating to appropriations, the levy of taxes, and the expenditure of city funds.

We have from time to time advised the commissioner of relief that all that is necessary to authorize him to incur an obligation against the city relief fund is a valid appropriation. The amount authorized to be expended during any year is not limited to the amount which will become available from the sale of tax anticipation warrants. If, however, he incurs obligations in excess of the amount of cash available from the

proceeds of the sale of tax warrants unpaid bills will accumulate which will encumber the city relief fund.

The commissioner of relief was averse to entering into obligations in excess of available cash in the city relief fund and, therefore, it became necessary in order to meet the demands of the needy in the city of Chicago to advance to the city relief fund from time to time money appropriated and levied for other corporate purposes but not immediately necessary for those purposes. The city council during the years 1936, 1937 and 1939 authorized the city treasurer and the city comptroller to advance to the city relief fund specific sums out of any funds in the city treasury not immediately necessary for the purposes for which the same were appropriated, to be reimbursed from any available receipts and revenues of the city of Chicago for relief.

On March 4, 1938 we advised you in answer to a request for an opinion as to the legality of the action of the city council in this regard as follows:

> "The commissioner of relief is authorized by the annual appropriation bill to expend the full amount of his appropriation in the performance of his duties as such commissioner. The statutes of Illinois limit the expenditures of any officer or head of any department or separate agency of the city government to the amount appropriated in the annual appropriation bill (chapter 24, paragraphs 103, 104, Illinois Revised Statutes, 1937). The resolution referred to did not extend the power of the commissioner of relief to obligate the city beyond the amount authorized by the annual appropriation bill. The only difficulty which stood in the way of the commissioner of relief to make all the expenditures authorized by the annual appropriation bill was that there was not sufficient money in the relief fund for payment in cash of all obligations within such appropriation. Under such circumstances it is not only proper but it is the duty of the fiscal officers of the city to make provision so that there will be money on hand to meet all of the legal obligations for relief or for any other purpose.
>
> "Generally speaking, the city council cannot authorize the diversion of city funds to purposes other than those for which they have been received or appropriated. However, idle funds may be borrowed for other purposes if there is reasonable certainty that the funds borrowed will be reimbursed when needed (*Gates* v. *Sweitzer*, 347 Ill. 353; *People* v. *Westminster Building Corp.*, 361 Ill. 153, 164). If it can be reasonably anticipated that the amount authorized to be advanced from other funds to the city relief fund will be repaid when needed, it is the duty of the city treasurer to comply with the order of the city council. Advances may be made from any fund which is not immediately necessary or from the aggregate of funds."

To hold now that the proceeds of taxes levied for relief cannot be used to reimburse the city funds from which advances were made to the relief fund would be contrary to the intent and letter of the resolutions of the city council at the time the advances were made and contrary to the mandate of our Supreme Court that idle funds may be borrowed if there is reasonable certainty that the funds borrowed will be reimbursed when needed.

The application of the proceeds of the 1939 tax levy to the reduction of loans made to the city relief fund should not affect the allocation of money from the emergency relief fund to the Chicago Relief Administration. If the city relief fund is encumbered by obligations lawfully incurred the amount of the encumbrance is not legally available for the relief of

needy persons and should be deducted from the amount estimated to be available from the proceeds of the 1939 taxes before computing the monthly pro rated share of funds legally available from said taxes to determine the amount to be allocated to the city from the emergency relief fund.

LEVY FOR TAXES UPON MONIES DUE CONTRACTOR

(No. 10496—Commissioner of Relief—A. J. B.—June 20, 1941.)

The commissioner of relief should comply with the warrant for distraint served by the United States collector of internal revenue upon monies held by said commissioner and due to an undertaker who has performed services at the commissioner's request.

Citations:

Statutes: Internal Revenue Code of the U. S., Title 26, secs. 3692, 3710(a), 3710(b).
U. S. Rev. Stat., sec. 3187.
16 Ill. Stat. Anno. (Jones), sec. 89.036.

Case: Cannon v. Nicholas, 80 F. (2d) 934 (1935).

DISPOSAL OF RELIEF MONIES

(No. 10513—Commissioner of Relief—J. F. G.—July 28, 1941.)

Since the commissioner of relief is an officer of the city and receives all money for and in behalf of the city upon which the duty of providing relief is imposed, such money should be turned over to the city treasurer for custody, subject to disbursement by warrants signed by the mayor and countersigned by the comptroller, upon requisition or voucher of the commissioner of relief instead of his retaining custody of the money until disbursed by him for relief purposes.

Citations:

Statutes: Cities and Villages act, art. V, sec. 102a.
H. B. No. 837, approved June 30, 1941.
IRS '39, 24: 105.
IRS '39, 107: 17a, 18a.
IRS '39, 139: 101.

Case: People v. Ohle, 345 Ill. 405 (1931).

OFFICE EQUIPMENT OF CHICAGO RELIEF ADMINISTRATION

(No. 10577—Commissioner of Relief—J. H. S.—December 22, 1941.)

Furniture and equipment received by the Chicago Relief Administration from the Illinois Emergency Relief Commission must, when no longer useful, be returned to the secretary of state.

The act creating the Illinois Public Aid Commission in lieu of the Illinois Emergency Relief Commission does not impliedly repeal that provision.

Citations:
Statutes: IRS '39, 23: 394 (Illinois Emergency Relief act).
IRS '41, 23: 393, 394 (Illinois Emergency Relief act).
IRS '41, 131: 4.

EMPLOYMENT OF RELIEF CLIENTS ON CITY WORK

(No. 10598—Commissioner of Relief—A. F. G.—February 10, 1942.)

Under section 20a, which is an amendment to the Pauper's Act, the overseer of the poor is required to submit monthly to the superintendent of streets a list of all employables receiving relief in the city and the superintendent of streets may give employment to such persons for work on roads under his jurisdiction.

Under this amendment it is the duty of the superintendent of streets and not of the commissioner of relief to assign the listed employables to work on the roads. The latter complies with the statute when he furnishes the list of employables.

Citations:
Statute: IRS '41, 107: 20, 20a (Pauper's Act).
Ordinance: Mun. Code: 14-4.
Other reference: 59 Corpus Juris, p. 984.

RECOVERY OF OVERPAYMENTS TO RELIEF CLIENTS

(No. 10619—Commissioner of Relief—A. F. G.—March 17, 1942.)

The commissioner of relief is charged with the implied duty to try to recover payments from persons who have received relief to which they were not legally entitled.

Citation: Mun. Code: 21-6.

CONTRACT FOR MILK DELIVERY TO RELIEF CLIENTS

(No. 10672—Commissioner of Welfare Administration—C. P. H.—July 28, 1942.)

The commissioner of welfare administration has authority to enter into an agreement for the delivery of milk to relief clients.

DISCLOSURE OF CONFIDENTIAL INFORMATION

(No. 10683—Commissioner of Welfare Administration—A. F. G.—September 3, 1942.)

The confidential relationship which exists between applicants for relief and the Welfare Administration is not such as would justify the Welfare Administration in concealing from the proper officers evidence of the commission of a crime which comes to its knowledge by reason of such relationship.

Citation:
Statute: IRS '41, 38: 584.

DETERMINATION OF PERJURY IN APPLICATION FOR RELIEF

(No. 10707—Commissioner of Welfare Administration—A. F. G.—November 17, 1942.)

In the administration of relief under the Paupers' Act, it is within the province of the commissioner of welfare to determine the question of perjury. Determination by a court and jury is not required. A former offense of perjury does not preclude the applicant from receiving present relief on an application not tainted with perjury.

Citation:
Statute: IRS '41, 107: 15 L (Paupers' Act).

CHAPTER IX

PUBLIC WAYS

A. DEDICATION AND VACATION

CITY LIABILITY IN VACATION OF PART OF STREET

(No. 10171—Commissioner of Public Works—E. H.—January 4, 1940.)

The city incurs no liability by the vacation of a part of a street when the vacation involves property abutting only on the property of the beneficiaries of the vacation ordinance, and when an ingress and egress is still provided for other property owners abutting on the said street.

TRANSFER OF STREET TO PARK DISTRICT

(No. 10174—Alderman, 41st Ward—E. H.—January 5, 1940.)

The city may not dedicate or transfer any street to the Park District for purposes other than street purposes because title to the street or alley vests, upon such vacation, to the abutting owners. After a street has been vacated, the abutting property owners may transfer their rights to such property to the Park District for park purposes.

Citation: IRS '39, 145:2.

RECORDS OF VACATION OF LOT

(No. 10176—Commissioner of Public Works—J. J. M.—January 8, 1940.)

An instrument of vacation of certain lots recorded in 1900 complied with the statutory requirements in force at the time of the vacation and the record of such vacation should be carried on the records of the bureau of maps and plats in a manner deemed suitable by the superintendent of maps.

Citations:
Statute: IRS (Hurd's, 1899) c. 109, par. 6.
Ordinance: Mun. Code: 8-33.

ESTABLISHMENT OF PUBLIC ALLEY BY PRESCRIPTION

(No. 10228—Superintendent of Streets—E. H.—March 25, 1940.)

An alley which has been used by the public for over fifty years, and whose use has been open, notorious, adverse, exclusive, and with the knowledge of the owner, possesses the elements necessary to establish an easement by prescription, and such alley may be considered as a public alley.

USE AND MAINTENANCE OF COMMON LAW ALLEYS

(No. 10296—Commissioner of Public Works—A. F. G.—June 21, 1940.)

The city is obligated to maintain all alleys which it has accepted, in a safe condition for public use regardless of the ownership of the fee.

Owners of lots abutting alleys dedicated by a common law dedication own the fee to the center of the alleys marked therein and may make any use of it not inconsistent with the city's easement for public use.

Citation:
Case: Sears v. City of Chicago, 247 Ill. 204 (1910).

VACATION OF LOTS WITHIN BLOCKS

(No. 10332—Commissioner of Public Works—R. J. N.—August 14, 1940.)

A vacation instrument vacating the lots within specified blocks does not vacate the block lines and the streets surrounding. The fact that taxes have been paid upon property located in a street does not bind the city to an acknowledgment of a vacation of the streets.

Sawyer avenue, Spaulding avenue and Christiana avenue in Ferguson's addition are streets within the city, and no house number certificate should be issued for property within the lines of said streets.

Citation:
Case: Wiehe v. Pein, 281 Ill. 130 (1917).

USE OF SPACE UNDER STREETS WHEN LAND DEDICATED FOR STREET PURPOSES ONLY

(No. 10391—Chariman, Committee, Harbors, Wharves and Bridges—E. J. K.—December 23, 1940.)

The city has power to pass an ordinance granting revocable permission to the state to construct and maintain gates to control the flow of water through an existing culvert under avenue "O" near 127th street, for the purpose of regulating the water level of Wolf lake, notwithstanding that the deed of the property to the city granted the right of way for street purposes only. The use of space under streets for public purposes does not interfere with their use by the public for travel and is consistent with the power of the city to regulate and control the use of streets.

The title to the beds of navigable and non-navigable lakes which have been meandered by government survey, is vested in the state, and held in trust for the purpose of navigation and fishing.

In granting to the State Division of Waterways of the Department of Public Works and Buildings the right to install a mechanizm in a culvert under Avenue O, a city street, for the purpose of maintaining the level of Wolf Lake, the city is exercising a legislative function as a governmental agency of the state, and such grant is made by the city in its governmental and not in its proprietary capacity.

When power conferred by a city has relation to public purposes and for the public good it is exempt from liability.

Citations:

Statutes: IRS '39, 19: 73.
IRS '39, 24: 65.8, 65.28, 65.29.

Ordinance: Proposed ordinance authorizing State to construct and operate gates in culvert under avenue "O," Coun. J. May 15, 1940, p. 2537.

Cases: Chicago Motor Coach Company, et al. v. City of Chicago, et al., 337 Ill. 200 (1930).
Murphy v. City of Chicago, 29 Ill. 279 (1862).
People ex rel. Stephen T. Mather, Appellant v. Marshall Field & Co., 266 Ill. 609 (1915).
City of Springfield v. Postal Telegraph-Cable Co., 253 Ill. 346 (1912).
Nelson v. Godfrey, 12 Ill. 19 (1850).
City of Quincy v. Bull, et al., 106 Ill. 337 (1883).
Gridley v. City of Bloomington, 68 Ill. 47 (1873).
C&NW RR. Co. v. City of Elgin, 91 Ill. 251 (1878).
Chicago Mun. Gas L. Co. v. Town of Lake, 130 Ill. 42 (1889).
Trustees of Schools v. Schroll, 120 Ill. 509 (1887).
Fuller v. Shedd, 161 Ill. 462 (1896).
Revell v. People, 177 Ill. 468 (1899).
People v. Kirk, 162 Ill. 138 (1896).
Wilton v. Van Hessen, 249 Ill. 182 (1911).
Hardin v. Shedd, 190 US 508 (1902).

Hammond, et al. v. Shepard, 186 Ill. 235 (1900).
Illinois Central RR. Co. v. Illinois, 146 US 397 (1892).
Illinois Central RR. Co. v. City of Chicago, 176 US 646 (1899).
People ex rel. v. The Chicago Telephone Company, 245 Ill. 121 (1910).
People v. Suburban RR. Co., 178 Ill. 594 (1899).
Roby v. City of Chicago, 215 Ill. 604 (1905).
People v. City of Chicago, 256 Ill. 558 (1912).
Roumbos v. City of Chicago, 332 Ill. 70 (1928).
Taylor v. City of Berwyn, 372 Ill. 124 (1939).
Other references: McQuillin, Municipal Corporations, v. 3, sec. 1337.
Dillon on Municipal Corporations, pp. 541-551.

POWER OF CITY TO CONTROL CREATION OF SUBDIVISIONS

(No. 10419—Chairman, Committee on Housing—D. L. L.—February 14, 1941.)

While the city may regulate and control the creation of new subdivisions, it can do so only to the extent of compelling the subdivider to plat the streets and alleys and other public highways therein in the manner in which the ordinance provides. However, a municipality must, after a compliance with all statutory provisions relating to the subdividing of land, approve such subdivisions.

A municipality cannot compel a subdivider to install public utilities, such as sewers, paving of streets and water mains, before giving its approval to such proposed subdivision, but it may refuse to accept the dedication of streets and alleys where the utilities have not been installed.

Citations:
Statutes: IRS '39, 109: 1, 2.
Cities and Villages act, art. X, sec. 5.
Ordinances: Mun. Code: 8-34, 30-14 to 30-17.
Cases: People v. Massieon, 279 Ill. 312 (1917).
Nimpfer v. Village of Fox Lake, 334 Ill. 46 (1929).
Russell v. Chicago and Milwaukee Electric Railway Co., 205 Ill. 155 (1903).

OPINION OF FOREGOING SYNOPSIS

We have your letter of December 26, 1940, requesting our opinion as to the power of the city of Chicago in controlling the creation of new subdivisions within its limits. You also request in that communication our opinion as to whether the city of Chicago can compel the installation of all public utilities, including sewers, streets, water mains, etc., before approval of the subdivision plat.

The subdivision of lands within the boundaries of any city is controlled by the statutory provisions relating thereto. Section 1 of chapter 109, Illinois Revised Statutes, 1939, provides in part as follows:

"Whenever the owner of lands shall wish to subdivide the same into two or more parts for the purpose of * * * or of re-subdivision

any lots or blocks therein, he shall cause the same to be surveyed and a plat thereof to be made by the county surveyor or some other competent surveyor, which plat shall particularly describe and set forth all the streets, alleys, common or public grounds, and all the in and out lots or fractional lots or blocks within, adjoining or adjacent to the land so divided, giving the names, width, courses and extent of all such streets and alleys, and numbering all lots and blocks by progressive numbers, giving their precise length and width. * * *"

Section 2 of chapter 109 provides for the recording of this plat.

Paragraph 5 of article X, chapter 24, Illinois Revised Statutes, 1939, provides that no map, plat or subdivision shall be entitled to record or of any validity until it shall have been approved by the city council or some officer designated in their behalf.

By ordinance, the superintendent of maps is *ex-officio* examiner of subdivisions and it is his duty to approve, after examination, any map, plat or subdivision in compliance with the statutory provision hereinabove quoted. (Section 8-34 of the Municipal Code.)

It has been held by our Supreme Court that the approval of the plat by the municipality, through a designated agency, as required by statute, is a ministerial act.

In *People* v. *Massieon,* 279 Ill. 312 (1917), the Supreme Court, in a mandamus suit to compel the municipality to approve a plat submitted to it, went into discussion of the rights and powers of a municipality with respect to the subdivision of lands. In that case the court stated (p. 315):

"Where the provisions of the statutes and the ordinances of the city have been complied with in the making of a plat for an addition to the city, the duty of the council to approve the plat is ministerial and may be enforced by *mandamus.* (26 Cyc. 250.) The right to subdivide real estate within a city and to dispose of it in lots, with reference to streets, alleys and other public grounds, affects the value of the property very materially. In the absence of any statute on the subject the owner of land might subdivide it in any way he saw fit, having regard only to his own wishes and without regard to public convenience. The legislature has seen fit to confer upon city councils the right to regulate the subdivisions of property within the corporate limits by requiring the approval of the plats of such subdivisions by the legislative authority of the municipality which has jurisdiction over the streets, alleys and public grounds. The city council may by ordinance require every such plat to be submitted to the council itself for approval or it may authorize the approval by some designated officer of the city. To this extent the right of the owner to have the plat of the subdivision of his land recorded and to sell his land with reference to such plat is limited, but no farther. There is no absolute discretion in the city council as to the approval of a plat. It may by ordinance, no doubt, regulate the direction and width of the streets and alleys and the location of public grounds and require conformity with existing subdivisions, streets and alleys, but such regulation must be by a general ordinance applying to all alike. * * *"

The right to subdivide land within the corporate limits not being barred by statute, it may be done without regard to public convenience. A municipality, by the acceptance of a plat and giving its approval, is not bound to accept the streets and alleys therein dedicated to the public use, and under its corporate powers is not compelled to exercise any governmental function over those dedicated streets and alleys. (*The People* v. *Massieon,* 279 Ill. 312 (1917).)

In *Nimpfer* v. *Village of Fox Lake,* 334 Ill. 46 (1929) the Supreme Court, in discussing the dedication of streets and alleys, stated the rule to be as follows (p. 50):

> "* * * The making and recording of such a plat is no more than an offer, which is binding on the maker of the plat but not upon the municipal authorities until acceptance. The owner of the property cannot, by making a plat of an addition to a city, impose upon the public authorities the burden of caring for the streets and alleys included in his subdivision of the property. (*Littler* v. *City of Lincoln,* 106 Ill. 353; *Hamilton* v. *Chicago, Burlington and Quincy Railroad Co.,* 124 *id.* 235.) The approval of the plat by the city council is not an acceptance of the streets and passageways shown upon the plat. Notwithstanding such approval the city still has the right to elect what streets upon the plat shall become public highways and public charges upon the municipality for their maintenance. (*Russell* v. *Chicago and Milwaukee Electric Railway Co.,* 205 Ill. 155; *People* v. *Massieon,* 279 *id.* 312; *Hoerrmann* v. *Wabash Railway Co.,* 309 *id.* 524.) The making of a plat not in compliance with the statute, and the sale of lots with reference thereto, are only evidence of an intent to dedicate, which, like every other dedication, to be made complete and carried into effect so as to create public rights, must be accepted and acted upon by the public. * * *"

The Municipal Code of Chicago has only one restriction relating to the platting of subdivisions. That restriction requires that the streets and alleys conform to minimum width requirements, and also confers upon the superintendent of maps the power of the arrangement and location of those streets and alleys. (Sections 30-14 to 30-17, inclusive.) There being no other restrictive ordinances in the code, a subdivider, upon conformity with those provisions, can compel the approval of his plat in line with the opinions of our Supreme Court.

Where streets and alleys are laid out as public highways, the acceptance of them by a municipality places the burden of their care and responsibility upon such municipality. The burden of paying for the construction of such improvements is then upon the municipality, who may levy the cost upon the property so improved.

Our Supreme Court in *Russell* v. *Chicago and Milwaukee Electric Railway Co.,* 205 Ill. 155 (1903), held that the mere dedication does not place upon public authorities the burden of the care and responsibility of such dedicated streets until there has been an acceptance by a municipality. We can find no authority holding that a municipality can compel the installation of public utilities before the acceptance of newly created streets and alleys. The municipality may, however, refuse to accept the dedication of streets and alleys where the utilities have not been installed.

We are of the opinion that while the municipality may regulate and control the creation of new subdivisions as the law now stands, it can do so only to the extent of compelling the subdivider to plat the streets and alleys and other public highways therein in the manner in which the ordinances provide; that a municipality must, after a compliance with all statutory provisions relating to the subdividing of land, approve such subdivision.

We are also of the opinion that a municipality cannot compel a subdivider to install public utilities, such as sewers, paving of streets, and water mains, before giving its approval to such proposed subdivision.

SUBSTITUTION OF TURNING AREA FOR ALLEY OUTLET

(No. 10460—Superintendent of Highways—E. J. K.—April 21, 1941.)

The proposed vacation of an alley, which would take away ingress and egress from other property adjoining the proposed vacation, would make the city liable for damages, unless consent to the vacation is obtained from all property owners abutting upon said alley.

The substitution of a turning area in a vacated alley for another alley outlet would probably relieve a municipality from its liability to abutting owners for damages caused by the taking away of ingress to and egress from their property from the direction of the vacated alley.

RESERVATION OF ALLEY SPACE

(No. 10505—Alderman, 41st Ward—J. J. M.—July 14, 1941.)

A provision in a warranty deed between private parties that "the rear eight feet of this lot is to be left open at all times for alley purposes," cannot be regarded as conveying any interest in the described property to the city.

Citation: City of Chicago v. Borden, 190 Ill. 430 (1901).

VALIDITY OF VACATION INSTRUMENT

(No. 10550—Commissioner of Public Works—D. D. K.—October 29, 1941.)

An instrument of vacation of Philadelphia place recorded in 1906 is valid since all requirements for vacation existing on the date of recordation had been complied with and any possible claims, either of the city or private persons, would now be barred.

Citations:

Statutes: IRS '41, 109: 6, 7.
IRS '39, 109: 6.

Cases: Littler v. City of Lincoln, 106 Ill. 353 (1883).
Wolpert v. City of Chicago, 280 Ill. 187 (1917).
Jordan v. City of Chenoa, 166 Ill. 530 (1897).

RELOCATION OF WATER MAINS AND SEWERS IN VACATED STREET

(No. 10579—Commissioner of Public Works—D. D. K.—December 30, 1941.)

The city cannot reserve in an ordinance of vacation the right to operate and maintain water pipes and sewers in vacated streets.

The city cannot recover the cost of relocating such mains and sewers.

Citations:
Statute: IRS '41, 145: 1.
Case: People v. City of Chicago, 321 Ill. 466 (1926).
Other reference: 19 Op. Corp. Coun., p. 228 (No. 9143).

REVOCATION OF OFFER OF DEDICATION

(No. 10644—Commissioner of Public Works—D. H. N.—June 4, 1942.)

The owner may revoke an offer of dedication at any time prior to its acceptance by the public. Revocation must be in accordance with statute, and vacation made of the original recorded plat.

Citations:
Statute: IRS '41, 109: 3, 6, 7.
Cases: City of Chicago v. C. B. & Q. R. R. Co., 319 Ill. 351 (1926).
Jordan v. City of Chenoa, 166 Ill. 530 (1897).
Clokey v. Wabash Ry. Co., 353 Ill. 349 (1933).

B. USE OF STREETS, ALLEYS AND SIDEWALKS

MAINTENANCE OF ORNAMENTAL CLOCK OVER PUBLIC WAY

(No. 10282—Superintendent of Compensation—M. H. F.—May 29, 1940.)

The maintenance of an ornamental clock over the public way, after expiration of the ordinance authorizing its erection, is unlawful, and the city has the right to remove it by its agents, charging the expense of removal to the grantees and sureties on their bond given to the city pursuant to the ordinance of authorization.

Citation: Coun. J. (1936-37), 2168.

DRIVEWAY OVER CINDER SIDEWALK SPACE

(No. 10309—Alderman, 41st Ward—M. H. F.—July 8, 1940.)

A strip of land along a city street, which has been reserved for the use of pedestrians, constitutes a sidewalk, even though such sidewalk is constructed of cinders. No driveway may be maintained over said sidewalk space without an order of the city council.

The city has control over the sidewalk of Cicero avenue where it is a state-aid road because the state has control only of that part of Cicero avenue used for vehicular traffic and the curb.

Citations:
Statutes: IRS '39: 121, 297, 301.
Ordinance: Mun. Code: 33-15, 33-41, 33-42.
Cases: King v. Swanson, 216 Ill. App. 294 (1919).
City of Bloomington v. Bay, 42 Ill. 503 (1867).
Heinecke v. Grosse, 99 Ill. App. 441 (1902).
Kohlhof v. City of Chicago, 192 Ill. 249 (1901).
Wilmot v. City of Chicago, 328 Ill. 552 (1928).
Jacobs v. City of Chicago, 244 Ill. App. 132 (1927).
Topliff v. City of Chicago, 195 Ill. 215 (1902).
Lusch v. Village of Odin, 158 Ill. App. 657 (1910).

"ARTERIAL HIGHWAY STREET" DEFINED

(No. 10316—Chairman, Committee on Traffic and Public Safety—A. F. G.—July 25, 1940.)

In the absence of an express statutory definition, the term "arterial highway street" means any street which is included in the "arterial highway system of the city" and which may be entitled to a distributive share of the motor fuel tax fund for its maintenance.

Citations:
Statute: Motor Fuel Tax law, sec. 10½.
Ordinance: Coun. J. (1934-35), p. 2475.

TEMPORARY BARRICADING OF STREET

(No. 10512—Commissioner of Streets and Electricity—M. H. F.—July 25, 1941.)

A street in a dangerous condition should be barricaded and the city would not be liable for the resulting temporary interference with property owners' use of an adjacent private driveway.

CONTROL OF SUB-SURFACE SPACE

(No. 10573—Commissioner of Public Works—R. J. N.—December 9, 1941.)

The city has the right to control the use of the land below the surface of the street where the city owns the fee. Where the city owns only an easement, the property owner has the right to control this space.

Citations:
Cases: Miller v. Commissioners of Lincoln Park, 278 Ill. 400 (1917).
Ryerson v. City of Chicago, 247 Ill. 185 (1910).
Tacoma Safety Deposit Co. v. City of Chicago, 247 Ill. 192 (1910).
Sears v. City of Chicago, 247 Ill. 204 (1910).
Doan v. Allgood, 310 Ill. 381 (1923).
City of Chicago v. Lord, 277 Ill. 397 (1917).

ACCUMULATION OF ICE AND SNOW

(No. 10628—Committee on Finance—C. N.—April 9, 1942.)

The city is not liable for injuries occasioned by the accumulation of ice and snow.

Citation: Strappelli v. City of Chicago, 371 Ill. 72 (1939).

LEASE OF STREETS FOR PRIVATE PURPOSES

(No. 10714—Alderman, 41st Ward—A. F. G.—November 27, 1942.)

The city has no power to lease a portion of the surface of a public street to private individuals for railroad or other private purposes.

Citation:
Case: People v. Wolper, 350 Ill. 461 (1932).

C. ADVERTISING AND HANDBILLS

VALIDITY OF HANDBILL ORDINANCE

(No. 10193—R. N.—February 3, 1940.)

The Chicago handbill ordinance which is confined to regulating the distribution of advertising matter so as to minimize the littering of streets is valid, notwithstanding a recent United States Supreme Court decision invalidating ordinances of other cities.

Citations:
Ordinance: Mun. Code: 36-28.
Case: Schneider v. State, 84 Law. Ed. (U. S.) 115 (1939).

HANDBILL DISTRIBUTION

(No. 10266—C. N.—May 13, 1940.)

The city's handbill ordinance, designed to prevent the littering of streets, does not prohibit the circulation of informative handbills in the manner prescribed by ordinance.

Citation: Mun. Code: 36-28.

DISTRIBUTION OF NON-COMMERCIAL HANDBILLS IN PUBLIC WAYS

(No. 10319—Commissioner of Police—W. V. S.—July 29, 1940.)

A handbill which expresses a political, social, or economic view does not fall within the category of "advertising matter" and may be circulated freely on the public streets.

Such handbill does not become advertising matter when it solicits application for membership in an organization devoted to civil liberties.

Citations:

Ordinances: Mun. Code: 36-28.
Code '31: 4281.

Cases: Lovell v. City of Griffin, 303 US 444; 82 (L. ed.) 660 (1938).
Schneider v. State, 308 US 147; 84 (L. ed.) 115 (1939).
Village of South Holland v. Stein, 373 Ill. 472 (1940).
Perkins v. Comrs. of Cook County, 271 Ill. 449 (1916).
State v. Orange, 32 NJ Law, v. III, p. 49.

Other reference: 20 Op. Corp. Coun. 222 (No. 9885).

OPINION OF FOREGOING SYNOPSIS

You have requested our opinion as to whether or not a handbill which you transmitted to us "could be distributed as non-commercial printed matter under the present interpretation of the Chicago handbill ordinance."

The handbill which accompanied your communication is printed, is approximately 8½" x 11" in size, and is issued by the Chicago Civil Liberties Committee. Under the heading "What is Democracy?" the handbill treats of the substance and historical background of the Bill of Rights of the Constitution of the United States and the Bill of Rights of the Constitution of the State of Illinois, and advocates devotion to democracy and to the guarantees of democracy as contained in the Bill of Rights. It stresses the duty and responsibility of all citizens to be active against the suppression of the essential liberties which are the basis of democracy.

A dotted line separates the discussion outlined above from a printed form to be used by interested persons as an application for membership in the Chicago Civil Liberties Committee. This form reads as follows:

> "I wish to help protect and preserve democracy and civil liberties in Chicago and hereby enroll as a member and contribute the sum of $..... for the coming twelve months.
> Name..... Address.....
> Membership ($1.00 and up) in the Committee gives all the members the right to call upon the organization for information and service in any matter affecting civil rights. *Civil Liberties News* is published monthly and distributed to all members.
>
> ---
>
> CHICAGO CIVIL LIBERTIES COMMITTEE
> 203 N. Wabash Ave. Phone State 4103"

In an opinion which we submitted to you on September 14, 1938, we dealt with the general subject of distribution upon the streets of Chicago of handbills, leaflets and circulars, dealing with social, economic and political questions. We discussed particularly the effect of the decision of the Supreme Court of the United States in the case of *Lovell* v. *City of Griffin,* 303 U. S. 444, 82 L. ed. 660 (1938), upon municipal regulation of handbills. We concluded that section 36-28 of the Municipal Code of Chicago, our handbill ordinance (then cited as section 4281 of the Revised Chicago Code of 1931) deals only with the distribution of advertising matter and does not affect the distribution of handbills or dodgers unless they constitute "advertising matter." We said further in that opinion:

> "In the enforcement of this ordinance, the first question to be determined by your Department is whether or not the handbill in question constitutes advertising matter; if this question is answered in the negative distribution of the handbill is not affected by the ordinance. As we have stated, the ordinance deals only with the distribution of advertising matter, and handbills whose only purpose is to present political, economic and social views and arguments do not fall within its scope. If the handbill constitutes advertising matter, however, then its size and the manner of its distribution must be in accordance with the provisions of the ordinance."

Recently the Supreme Court of the United States rendered another decision relating to the constitutional guarantees of freedom of speech and press in connection with municipal regulation of handbill distribution. In *Schneider* v. *State,* 308 U. S. 147, 84 L. ed. 115 (1939), there were presented to the court four cases involving municipal ordinances restricting handbill distribution and canvassing. It was contended that each ordinance abridged the freedom of speech and of the press guaranteed by the federal constitution.

The Supreme Court held each ordinance invalid, and said (page 120):

> "This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties."

Although it was urged that the ordinances were designed to prevent the littering of streets, the court further said (page 121):

> "* * * We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handling literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets."

This decision supports the view expressed in our opinion of September 14, 1938, that handbills whose only purpose is to present political, economic and social views do not fall within the scope of section 36-28 of the Municipal Code of Chicago, which deals only with the distribution of advertising matter.

The attitude of the Supreme Court of Illinois with respect to the constitutional rights of freedom of speech and of the press was very recently expressed in *Village of South Holland* v. *Stein,* 373 Ill. 472 (1940). In that case Mrs. Stein, a member of an organization called "Jehovah's Witnesses," was found guilty of a violation of an ordinance of the Village of South Holland which made it unlawful for anyone to go into a private residence for the purpose of soliciting or canvassing for orders without first obtaining from the village board a solicitor's permit. An appeal was taken upon the ground that the ordinance was invalid. The Supreme Court reviewed many of its own decisions and cited with approval the recent decisions of the Supreme Court of the United States in *Lovell* v. *City of Griffin,* and *Schneider* v. *State,* to which we have referred. The court also pointed out that the guaranty of freedom of speech and of the press expressed in the constitution of the State of Illinois is broader in scope than that expressed in the federal constitution. The court said at page 479:

> "The constitution of Illinois is even more far-reaching than that of the constitution of the United States in providing that every person may speak freely, write and publish on all subjects, being responsible for the use of that liberty. Webster's International Dictionary defines the word 'publish' as meaning 'to bring before the public as for sale or distribution.'
>
> "In *Perkins* v. *Comrs. of Cook County,* 271 Ill. 449, 475, we said the primary meaning of the word 'publish' is to make known, following the definition laid down in *State of Orange,* 54 N. J. Law, 111. Thus, the constitution not only guarantees the right to speak and write, but also to make known, which is not limited to a person's own writing."
>
> * * * * * *

A question may arise as to whether a leaflet expressing a social or political point of view becomes "advertising matter" when it includes a printed application for membership in an organization devoted to the preservation of civil liberties. We believe that the inclusion of the application for membership in the leaflet which you transmitted does not render the publication "advertising matter" within the meaning of the ordinances. (See *Schneider* v. *State,* 308 U. S. 147, 155; 84 L. ed. 115 (1939).)

Our opinion, therefore, is that the leaflet submitted is not "advertising matter" within the scope of our handbill ordinance.

PROHIBITION OF SOUND-AMPLIFIERS

(No. 10328—Commissioner of Police—W. V. S.—August 12, 1940.)

An ordinance prohibiting the use of sound-amplifiers in the city streets is not an infringement of the constitutional guarantee of free speech, as one has no right to secure an audience by compulsion.

Citations:
Statutes: Cities and Villages act, art. V, sec. 72.
IRS '39, 24: 65.8, 65.19, 65.38, 65.65, 65.71, 65.74.
Ordinance: Mun. Code: 99-56.
Cases: Hague v. C.I.O., 307 US 496; 83 (L. ed.) 1423 (1938).
Schneider v. State, 308 US 147; 84 (L. ed.) 115 (1939).
Other reference: 20 Op. Corp. Coun. 217 (No. 9882).

USE OF PUBLIC WAYS FOR MAKING BROADCASTING RECORDS

(No. 10425—R. N.—February 21, 1941.)

The public ways may not be used for the purpose of making records for broadcasting, and thus no permit can be issued for this purpose.

Citation: Mun. Code: 36-49.

DISTRIBUTION OF HANDBILLS ON PUBLIC WAYS

(No. 10427—Commissioner of Police—B. H.—February 21, 1941.)

The police department may not interfere with the distribution of handbills along the public ways, if these handbills pertain to social, political or economic matters.

Citations:

Constitutions:	United States, Amend. 1.
	Illinois, art. II, sec. 4.
Cases:	Village of South Holland v. Stein, 373 Ill. 472 (1940).
	Schneider v. State, 308 US 147, 84 L. Ed. 115 (1939).
Other reference:	20 Op. Corp. Coun. (1938-39), p. 222 (No. 9885).

D. TRAFFIC

TESTING OF MOTOR TRUCKS BY CITY

(No. 10179—Public Vehicle License Commissioner—M. H. F.—January 19, 1940.)

After March 1, 1940, the city will no longer have power to test motor trucks since the Illinois Truck act has withdrawn such power from the city and vested it in the State Department of Public Works and Buildings. However, those trucks specifically exempted from the operation of the Illinois Truck act, may be tested by the city, with the exception of United States trucks while being used for the federal government.

Citations:

Statutes:	IRS '37, 95½: 26b.
	Ill. Laws (1939) pp. 753, 789.
Ordinance:	Motor vehicle testing ordinance, 10/30/35.

OPINION OF FOREGOING SYNOPSIS

Your communication of recent date requests our opinion as to the power of your commission, after March 1, 1940, to compel motor truck owners to comply with the city's ordinance which requires the inspection of motor vehicles owned and operated by residents of the city of Chicago.

By an act of the general assembly passed in 1935, as amended by an act approved July 8, 1937 (Illinois Revised Statutes, 1937, chapter 95½, paragraph 26b), cities having populations of 40,000 or over were empowered by ordinance to require the resident owner of a motor vehicle to submit, not more often than semi-annually, such motor vehicle for inspection to determine the sufficiency of the equipment required by the state Motor Vehicle Act for safe operation on public highways, and to provide testing stations, located at convenient places in such cities, for the inspection of such equipment. Such act further provides that testing stations may be constructed, maintained and operated from funds authorized to be appropriated for such purpose by the state Motor Vehicle Act. It further provides that no fee shall be charged the vehicle owner for such inspection. Pursuant to the power thus granted, the city of Chicago enacted its ordinance of October 30, 1935 in relation to mandatory inspection of motor vehicles owned and operated by residents of the city of Chicago.

At the 1939 session of the legislature, an act was passed to amend section 123 of "An Act in Relation to the Regulation of Traffic," approved July 9, 1935, as amended. (Laws of Illinois, 1939, p. 789.) This amendatory act was approved July 25, 1939. It provides for official testing stations and the making of safety tests upon all trucks subject to regulation under the "Illinois Truck Act." It authorizes the department of public works and buildings to issue permits to qualified automotive service stations, or public or private garages, to conduct such tests, provides a fee for such permit and requires a bond of $1,000.00 of persons licensed thereunder. It provides that no owner of any truck subject to inspection shall operate said truck upon the highways of the state of Illinois after March 1, 1940 unless there is affixed to said truck a certificate of safety in effect at the time that the said truck is operated. It specifically provides as follows:

> "Any truck displaying a certificate of safety, issued under the provisions of this Act, is hereby declared to be exempt from any test required by ordinance or otherwise in any city, village, or incorporated town in the State of Illinois."

The "Illinois Truck Act," approved July 25, 1939 (Laws of Illinois, 1939, p. 753), regulates the intrastate operation of trucks designed or used for the transportation of property. It defines the word "truck" as any vehicle, machine, tractor, trailer, or semitrailer, motorcycle or combination or combinations thereof, propelled or drawn by mechanical power and designed or used in the transportation of property on the highways. It classifies carriers and provides that certificates of necessity and convenience must be obtained for operation after March 1, 1940, by line haul, local and specialized carriers, and that permits must be obtained for operations after said date by contract carriers, agricultural cooperative carriers and interstate carriers required to secure registration of trucks after said date. It exempts (a) motor vehicles used exclusively for carrying United States mail and motor vehicles while being used or operated for or under the control of the United States government; (b) motor vehicles transporting baggage or other personal effects as an incident to the transportation of persons or passengers; (c) farm tractors transporting or drawing implements of husbandry on the highways; (d) tractors and road machines (other than trucks) used in the construction, main-

tenance or repair of highways; (e) house trailers when not used for the transportation of property under such conditions and arrangements as would qualify such operation under and classification of carrier as defined in the definition section of the act; (f) trailers having a gross weight of two thousand pounds and less, including the weight of the trailer and maximum load and not used for the transportation of property for hire; and (g) motor vehicles used primarily for the transportation of persons and used occasionally for transporting property.

By providing in section 123, as amended, of the act in relation to the regulation of traffic, for official testing stations and safety tests for all trucks subject to regulation under the Illinois Truck Act, the legislature, in our opinion, has withdrawn from cities their authority over the same subject matter. In fact, as previously noted, section 123, as amended, specifically provides that any truck displaying a certificate of safety, issued under the provisions of the act of which that section is a part, is exempt from any test required by ordinance or otherwise in any city, village, or incorporated town in the state of Illinois.

Our opinion therefore, is that from and after March 1, 1940, the city of Chicago will no longer possess the power derived from the act of 1935, as amended, and exercised pursuant to the provisions of its ordinance of October 30, 1935, to test motor trucks which are subject to regulation under the Illinois Truck Act. As the Illinois Truck Act subjects to regulation all trucks, except those specifically exempted, your authority to compel the testing of motor trucks under the city's ordinance will, after the date above stated, be limited to the testing of those trucks specifically exempted from regulation under the Illinois Truck Act, but not including the United States mail trucks or trucks while being used or operated for or under the control of the United States government.

In connection with this opinion and the amendment to section 123 above mentioned, your attention is invited to the provisions of the amendatory act which provide that any city which establishes and maintains testing stations under the provisions of the motor vehicle law shall, upon application to the department of public works and buildings, and without payment of any fee or filing of any bond, but upon proof of experience, training and ability of the operator of the testing equipment and proof of the installation of approved testing equipment, be issued a permit to operate a testing station. You will probably wish to consider the question whether the city should seek testing station permits for its established testing stations.

SAFETY INSPECTION OF POLICE TRUCKS

(No. 10201—Commissioner of Police—A. F. G.—February 16, 1940.)

All trucks owned, operated or controlled by a municipal corporation and designed or used for the transportation of property are subject to the Illinois Truck act and are required to undergo inspection by the state as to their mechanical condition.

The trucks of the Chicago police department, with the exception of the patrol trucks which are used for the transportation of passengers, must be submitted to a safety test and receive a certificate of safety under the Illinois Truck act.

Citations: **Uniform Traffic act, sec. 123.**
Illinois Truck act, secs. 20, 25.

TESTING OF DRIVER'S SIGNALS

(No. 10265—Chairman, Committee on Traffic and Public Safety—A. F. G.—May 3, 1940.)

An ordinance requiring motorists to submit to a test of their knowledge of driving hand and arm signals in conjunction with the semi-annual vehicle test would be of questionable legality as it would not operate uniformly on all drivers.

Citations:
Statutes: IRS '39, 95½: 21c.
Uniform Act Regulating Traffic on Highways, secs. 64, 65, 66, 67.
Other reference: 43 CJ 231.

SPEED LIMITS IN ALLEYS

(No. 10277—Chairman, Committee on Safety and Lighting—A. F. G. —May 22, 1940.)

The city council has no power to enact an ordinance fixing the *prima facie* speed of motor vehicles in alleys at ten miles per hour.

Citations:
Statutes: Motor Vehicle law, sec. 26.
Uniform Act Regulating Traffic on Highways, secs. 49, 50.
Ordinance: Mun. Code: 27-38.

REGULATION OF PEDESTRIAN TRAFFIC

(No. 10322—Committee on Traffic and Public Safety—P. J. L.—August 2, 1940.)

The city council has the power to impose any reasonable regulation upon pedestrian use of the streets, having for its object the public safety, subject, however, to existing statutory regulations.

Citations: Cities and Villages act, art. V.
IRS '39, 95½: 125, 170, 175.

REGULATION OF PARKING IN ALLEYS

(No. 10359—Secretary, Sub-committee on Freight Carrying Vehicles—M. H. F.—October 24, 1940.)

An ordinance, reasonable in its terms, restricting the parking of vehicles in alleys in commercial districts, would probably be upheld by the courts.

Citations:
Statute: Cities and Villages act, art. V, secs. 7, 9, 10, 11, 12, 17, 20.
Ordinances: Mun. Code: 1-9(f), 27-24, 27-29.
Case: City of Chicago v. McKinley, 344 Ill. 297 (1931).

GARAGE ATTENDANTS TO PROTECT PEDESTRIANS CROSSING DRIVEWAYS

(No. 10382—Chairman, Sub-committee on Parking—A. F. G.—December 9, 1940.)

An ordinance requiring that attendants be employed to protect pedestrians passing over driveways leading from any "loop" garage to the streets, or that regular garage attendants accompany cars leaving such garages to warn pedestrians of approaching danger, would be reasonable and incidental to the power of the city to license and regulate garages. The city may properly protect pedestrians in their full, free and safe use of the sidewalks.

Citation:
Cases: Stearns v. City of Chicago, 368 Ill. 112 (1938).
City of Chicago v. Benn Alpert, Inc., 368 Ill. 282 (1938).

TIRE INSPECTION AT TESTING LANES

(No. 10594—Chairman, Chicago Street Traffic Commission—A. F. G. —February 4, 1942.)

The public vehicle license commission has no authority to test pneumatic tires of motor vehicles submitted for periodical inspection at testing lanes.

Citations:
Statute: Motor Vehicle Law, sec. 21c and art. XV.
Ordinance: Mun. Code: 27-83 to 27-88.
Case: City of Evanston v. Wazau, 364 Ill. 198 (1936).

CHAPTER X

PUBLIC UTILITIES

A. RAILROADS

FORFEITURE OF RIGHT-OF-WAY RIGHTS

(No. 10192—Alderman, 9th Ward—J. J. D.—February 3, 1940.)

The Blue Island Railway Company having failed to complete its track work as provided by the ordinance granting it a right-of-way, has no authority to occupy that portion of the alleged right-of-way upon which it is proposed to construct a street.

Citations:
Ordinance: Blue Island Railroad Company ordinance (Coun. J. 1891-2).
Cases: Blocki v. People, 220 Ill. 444 (1906).
Manton v. South Shore Traction Co., 106 N. Y. S. 82 (1907).
Los Angeles Ry. Co. v. City of Los Angeles, 152 Cal. 242 (1907).
Atchison Street Ry. Co. v. Nave, 17 Pac. (Kan.) 587.
Chicago Rys. Co. v. Commerce Commission, 336 Ill. 51 (1929).

COAL MINE INFORMATION FROM RAILROAD

(No. 10230—Inspector, Department of Weights and Measures—M. H. F.—April 1, 1940.)

A railroad may properly disclose to the inspector of weights and measures the name and location of the mine from which a carload of coal has been shipped in order to assist the inspector in enforcing the city ordinances against fraudulent substitutions of coal.

Citations:
Ordinance: Mun. Code: 172-9. 172-10.
Cases: Des Moines City RR. Co. v. Des Moines, 151 Fed. 854 (1907).
American Telephone & Telegraph Co. v. New Decatur, 176 Fed. 133 (1910).
Other reference: United States Code Ann., sec. 15, par. 11, title 49.

BRIDGE MAINTENANCE COMPENSATION BY RAILROAD

(No. 10269—Commissioner of Public Works—D. L. L.—May 14, 1940.)

A railroad company is still obligated to pay its share of the maintenance cost of a bridge while the bridge is being closed for repairs,

under a contract agreement to make such payment toward maintaining and "renewing" the bridge.

Citations:
Ordinances: Galena & Chicago Union RR. contract, May 30, 1864.
Galena & Chicago Union RR. agreement, Coun. J. (1890) v. 2, p. 1055.
Case: West Madison State Bank v. Mudd, 250 Ill. App. 258 (1928).
Other references: Webster's Dictionary, "renewing."
Bouviers, Rawleys (3rd rev.), "renew."

RAILROAD TRAIN AND TRUCK PARKING REGULATIONS

(No. 10271—Chairman, Committee on Railway Terminals—J. J. D.—May 15, 1940.)

The city has no power to prohibit railroads from obstructing street crossings, as the entire control over railroads has been vested in the Illinois Commerce Commission. For the same reason, the city cannot compel a railroad to remove its tracks when the Commission has authorized their continuance, notwithstanding that the authorizing ordinance had expired.

The city has the power to impose reasonable regulations on the parking of trucks while waiting to unload and the maneuvering thereof in city streets adjoining a railroad freight house.

Citations:
Statute: IRS '39, 95½: 261.
Public Utilities act, approved, sec. 10, June 29, 1921.
Ordinances: Mun. Code: 188-49.
Plymouth Court ordinance, July 15, 1915.
Cases: City of Chicago v. McKinley, 344 Ill. 297 (1931).
Haggenjos v. City of Chicago, 336 Ill. 573 (1929).
City of Chicago v. Hebard Express Co., 301 Ill. 570 (1922).
Lowe v. Stoutamire, 123 Fla. 135, 166 So. 310 (1936).
SW Greyhound Lines v. RR. Co., 128 Tex. 560, 99 SW (2d) 263 (1936).
City of Geneseo v. Ill. N. Utilities Co., 363 Ill. 89 (1936).
Village of Atwood v. C&IW RR. Co., 316 Ill. 425 (1925).

DIMMERS ON RAILROADS IN CITY

(No. 10280—Chairman, Committee on Traffic and Public Safety—J. J. D.—May 27, 1940.)

The city council has no power to enact an ordinance requiring that headlights on all locomotives coming into the city be equipped with dimmers, or one compelling engineers to dim headlights upon entering the city.

Citations:
Case: Northern Trust Company v. Chicago Railways Company, 318 Ill. 402 (1925).
Other reference: Illinois Commerce Commission act, Jan. 1, 1914.

MAINTENANCE OF SIDEWALK UNDER RAILROAD STRUCTURE

(No. 10285—Commissioner of Public Works—J. J. D.—June 3, 1940.)

Replacement at its own expense of the sidewalk torn up by railroad company does not impose any duty upon said company for the future maintenance of said sidewalk.

Citations:
Cases: People v. Illinois Central RR., 235 Ill. 374 (1908).
City of Chicago v. Pennsylvania Co., 252 Ill. 185 (1911).

ALLOCATION OF EXPENSE OF VIADUCT REPAIR

(No. 10384—Commissioner of Public Works—A. J. R.—December 10, 1940.)

Notwithstanding a contract was entered into between the city and the Chicago, Rock Island and Pacific Company in 1911 apportioning the cost of repairing a viaduct, the determination of whether the city is obligated to pay part or all of the repair of approach to this viaduct cannot be governed by the contract ordinance. The relative obligations of the city and railroad with reference to such repairs must be determined by the Illinois Commerce Commission upon whom the General Assembly has conferred such regulatory police power; such power was withdrawn from the city since the effective date of the original Public Utilities act on January 1, 1914.

Citations:
Ordinances: Coun. J. (1887-88), p. 467 (Construction of Wells street approach to Roosevelt road viaduct).
Coun. J. (Jan. 3rd to Apr. 17th, 1911), p. 3431 (Repair of said approach and division of cost thereof).
Case: City of Chicago v. Illinois Commerce Commission, 356 Ill. 501 (1934).

AUTHORITY TO CONSTRUCT ADDITIONAL TRACKS

(No. 10390—Commissioner of Public Works—E. H.—December 20, 1940.)

An ordinance of 1916 authorizing a contract for the construction of a spur track was exhausted by the construction of such track and is not sufficient to authorize a subsequent contract for the construction of additional spur tracks nor the relocation of the present track. A new ordinance is required to authorize such a contract.

Citation: Coun. J. (1915-16), v. II, p. 4086 (Construction of spur track at Municipal Plant).

CONSTRUCTION OF SEWER UNDER RIGHT-OF-WAY

(No. 10409—Commissioner of Public Works—E. H.—January 24, 1941.)

Where a 5½ foot sewer was built, under contract that the contractor was to assume all liability for crossing the railroad tracks, underneath the tracks of a railroad company at a point where there was no intercepting open street, the city became a permissive licensee of the railroad company for the maintenance of the sewer. Since the sewer now planned for construction through the railroad right-of-way is of greater dimension than the present one, the city will have to acquire an easement for the new sewer. Authority to execute such easement must first be secured by the railroad company from the Illinois Commerce Commission.

The cost of shoring the tracks during the construction of the sewer would be a proper element of damage in a condemnation proceeding for the acquisition of an easement through the railroad right-of-way, but the costs of shoring the tracks on a public street would not be so assessed against the city.

Citations: Sears v. City of Chicago, 247 Ill. 204 (1910).
East Peoria Sanitary District v. Toledo, Peoria & Western RR., 353 Ill. 296 (1933).

CREDIT FOR SALVAGE FROM RAILROAD TRACKS AT AIRPORT

(No. 10448—Commissioner of Public Works—H. R. P.—March 29, 1941.)

Under the ordinance providing for the relocation of tracks of the Chicago and Western Indiana Railroad Company, the city is entitled to credit for the material salvaged from the removal of railroad tracks crossing school section 16 and from the connections east and west thereof.

Citation: Coun. J. (1938-39), sec. 8-D, pp. 7137, 7138A, 7139.

AGREEMENT FOR MAINTENANCE OF VIADUCT APPROACH

(No. 10638—Commissioner of Public Works—H. M. A.—May 8, 1942.)

The agreement between the city and the railways company for the maintenance and repair of an approach to a viaduct is controlling. The commerce commission has no jurisdiction to determine the obligation.

Citations:
Statute: IRS '41, 111⅔: 62 (Public Utilities act).
Cases: Missouri K. & T. Ry. Co. v. Oklahoma, 271 U. S. 303 (1925).
City of Geneseo v. Illinois Northern Utilities Co., 378 Ill. 506 (1941).

ILLINOIS COMMERCE COMMISSION'S JURISDICTION OVER REPAIRS TO VIADUCT

(No. 10691—Commissioner of Public Works—H. M. A.—October 1, 1942.)

Authority of the Illinois Commerce Commission does not extend over matters of prior contract for repairs and maintenance. However, the Wells street approach to the Roosevelt road viaduct is not covered by contract and therefore the Illinois Commerce Commission has jurisdiction over apportionment of costs of repair and maintenance.

Citations:
Statute: IRS '41, 111⅔: 62 (Public Utilities Act).
Case: City of Geneseo v. Ill. Northern Utilities Co., 378 Ill. 506 (1941).

REMOVAL OF BRIDGES OVER STREETS

(No. 10694—Committee on Railway Terminals—J. F. G.—October 7, 1942.)

Removal of railroad bridges which span public streets should be carried on under permit from city authorities and upon the furnishing of adequate indemnification against damages, costs and expenses.

REMOVAL OF ELEVATED COLUMNS FROM WACKER DRIVE

(No. 10695—Chicago Street Traffic Commission—A. F. G.—October 9, 1942.)

Columns constructed by the city in connection with the Wacker Drive improvement, which columns were necessary to support tracks of the elevated railroads and for the cost of which the elevated lines did not reimburse the city, may be removed by the city in the event that they become a traffic hazard.

B. OTHER UTILITIES

SIDEWALK PERMITS FOR PUBLIC UTILITIES

(No. 10180—Superintendent of Sidewalks—J. J. D.—January 19, 1940.)

The franchise under which the Commonwealth Edison Company operates requires the securing of a permit before it can do any work in any sidewalk or in public places, or in any way disturb the surface thereof.

Contractors for the Federal Housing Authority are not exempted from paying permit fees or from conforming to ordinances and specification governing construction of sidewalks abutting housing projects.

The Peoples Gas Company is subject to existing city ordinances requiring a permit and permit fees for the construction and repair of sidewalks when they are affected by the transfer of conduits.

Citations:

Statute:	Ill. Consolidated Gas act, July 1, 1897.
Ordinances:	Hoover's Special Ordinances (1915) p. 244.
	Mun. Code: 33-1, 33-2, 33-3.
Opinion:	Op. Corp. Coun. vol. XVIII, No. 7263 (Nov. 6, 1931).

REIMBURSEMENT FOR RESTORING TUNNEL

(No. 10231—Chairman, Committee on Finance—J. F. G. & W. H. S.—April 1, 1940.)

The reimbursement to the Chicago Tunnel Company for restoration expenses occasioned by the subway construction is made pursuant to the lease of the tunnels from the city. Such reimbursement will not be a precedent nor affect the obligations of other public utilities to remove or relocate their equipment on account of the construction of subways.

Citations:

Statute:	IRS '39, 24: 569g.
Ordinances:	Coun. J. (1902-04), p. 14, sec. 1.
	Coun. J. (1931-32), p. 699, sec. 4.
	Coun. J. (1932-33), p. 2731, sec. 5.
Case:	People v. Chicago City Ry. Co., 324 Ill. 618 (1926).

COMPENSATION FROM "L" LINES

(No. 10267—City Comptroller—J. F. G.—May 13, 1940.)

The trustee for the Chicago Rapid Transit Company is liable to the city for compensation for use of the "loop line" on the basis of one-half cent for each cash paying passenger and also each transfer passenger carried by the "L" lines. Such compensation requirement is also applicable to the lump sum payment made by the Chicago Surface Lines to the Chicago Rapid Transit Company in settlement of the proportionate amount due for passengers transferring from the surface lines to the "L" lines.

Neither the unification of the various transportation companies nor the order of Illinois Commerce Commission providing universal transfers alters the terms of agreements between the several companies and the city requiring the elevated lines to pay to the city compensation on the basis of passenger fares received regardless of the source of such fares.

Citations:
Ordinances: Cooperation Agreement, Coun. J. (1896), pp. 464, 467, 579 et seq. 589.
Hoover's Spec. Ord. of Chicago (1915), pp. 1163-4, 1238, 1248, 1291, 1350.
Coun. J. (1896), p. 589.
Other reference: 6 Op. Corp. Coun. (1911), p. 637.

OPINION OF FOREGOING SYNOPSIS

With your letter of January 3, 1940 you transmitted a proposal from J. A. Seymour, auditor for the trustee of Chicago Rapid Transit Company, to settle disputed claims for compensation to the city arising from gross receipts from passengers riding over the elevated lines, surface lines and motor coach lines by transfer, pursuant to the order of the Illinois Commerce Commission for interchange of transfer privileges between all local transportation companies. The right of the city to such compensation from the "L" lines arises from two sources, namely:

(1) "An ordinance granting permission to the Northwestern Elevated Railroad Company to construct, maintain and operate an elevated railroad and branches in the City of Chicago," passed January 6, 1894 (Special Ordinances of Chicago (Hoover) 1915, p. 1286).

Section 13 of the foregoing ordinance provides that the company shall pay to the city of Chicago an annual license fee of $50 for each and every car used by it in transporting passengers for hire and after the expiration of ten years from and after the commencement of the operation of the elevated railroad to pay annually a percentage of its *gross receipts from the operation of said road and branches* as compensation for the benefits conferred by this ordinance as follows: One per cent for a period of ten years; two per cent for the following period of ten years; and three per cent for the remainder of the fifty years for which this franchise is granted.

In an opinion rendered by this department on February 7, 1912 (Op. Corp. Coun. (1911-12), p. 637 *et seq.*) it was held that the provision for compensation contained in section 13 of the ordinance above referred to was applicable only to the elevated railroad and branches authorized by that ordinance and could not be extended to include any elevated railroads or branches constructed pursuant to authority contained in ordinances subsequent to that of January 8, 1894. The elevated railroad and branches constructed by virtue of the ordinance of January 8, 1894 consists of that portion of the present system of "L" lines running due north and south with its northern terminus at Wilson avenue and the southern terminus at W. Van Buren street. This is known as the main line of the Northwestern Elevated Railroad Company's property which was later acquired by Chicago Rapid Transit Company, a consolidated corporation, and is now operated by a trustee of the last named company appointed by order of the United States district court. Since the opinion of this department of February 7, 1912 the city and "L" lines have accepted and acted in accordance with that opinion in the matter of settling the amount of compensation due the city each year.

2. An agreement between the Union Elevated Railroad Company and the Union Consolidated Elevated Railway Company on the one part and the city of Chicago on the other part, dated July 6, 1896 (Coun. J., p. 589). This agreement relates to an ordinance authorizing the Union Consolidated Elevated Railway Company to construct, maintain and operate an elevated railroad with branches in Van Buren street and Market street connecting with the tracks of the Union Elevated Railroad Company on Wabash avenue and with the tracks of the Metropolitan West Side Elevated Railroad Company on Van Buren street just east of Halsted street and at Market street between Van Buren and Jackson streets. Part of the Van Buren street line was to form a connecting link for the "loop line" of the Union Elevated Railroad Company subject to joint use by all other elevated railroads upon such terms and conditions as had been agreed upon and such terms and conditions as might thereafter be agreed upon between all of said companies (Coun. J., p. 579 *et seq.*).

The agreement provided that in consideration of the approval of the ordinance of June 29, 1896, which was then still subject to veto, the railroad companies, their successors and assigns, etc. "shall pay to said city, semi-annually, * * * during the term of said ordinance after the year 1896, in addition to any and all payments expressly by said ordinance or by any other ordinance of said city required, a proportionate amount as hereinafter stated of such *tolls, income, rents, issues and profits,* after making a deduction therefrom at the rate of two hundred and fifty thousand dollars a year on account of the interest charged against said "loop lines," before computing said proportionate amount. * * *" Then follows a schedule of the proportionate amounts payable on such gross receipts from time to time, including for the remaining term of said ordinance after December 31, 1931, *approximately fifteen years, twenty-five (25) per centum per annum on such gross receipts.*

The agreement provides "that if the rates of tolls or rentals payable or chargeable to any person or corporation for the use of said loop line shall at any time be reduced below the rates prescribed by the contracts heretofore made between said Union Elevated Railroad Company and said other corporations proposing to use said loop line (which said contracts are set forth in the printed proceedings of the meeting of said city council held on the 22d day of June, 1896, beginning on page 464) the gross receipts of said loop line shall, nevertheless, for the purposes of this agreement be computed and ascertained thereafter precisely as if no such reduction had been made; *it being the intention of this agreement that said railroad companies shall make their reports of payments to said city upon the basis of minimum gross receipts not less at any time then would*

be produced by a continuance of said prescribed rates, and that no deductions for expenses of said loop line other than those above specifically provided for [$250,000 to cover interest charge] shall be made at any time from said gross receipts before computing the percentage to be paid to said city."

The contracts referred to in the agreement of July 6, 1896 were dated December 19, 1894. The first was entered into between the Union Elevated Railroad Company, as lessor, and the Lake Street Elevated Railroad Company, the Northwestern Elevated Railroad Company, the Metropolitan West Side Elevated Railroad Company and the Chicago and South Side Rapid Transit Company, as lessees. Pursuant to this agreement a second agreement was entered into between the same parties, appearing in the Journal of the Proceedings of the City Council of June 22, 1896 at page 467, in which it was provided that the rental to be paid by each lessee of the "loop line" shall be the sum of *one-half a cent for each paying passenger* carried by each lessee upon its railroad; provided that the minimum rental payable by all of said lessees in any year shall be the actual cost of the maintenance and operation of said "loop line" including the taxes levied on said "loop line" and the sum of two hundred and fifty thousand dollars per annum in addition thereto; such minimum rental being divided between said lessees in proportion to the number of passengers carried by each of them upon their respective railroads.

Since the consolidation of all "L" line companies under the corporate name of Chicago Rapid Transit Company in the year 1924 the relations between the Union Elevated Railroad Company, as lessor, and the other "L" line companies, as lessees, ceased to exist and the agreement for payment of tolls, rentals and other charges remains effective only for the purpose of determining the amount due to the city as compensation for benefits conferred by the ordinance of June 29, 1896. The city and Chicago Rapid Transit Company have been settling the "loop line" compensation account on the basis of one-half a cent for each paying passenger carried by Chicago Rapid Transit Company on any of its lines.

On June 5, 1935 the Illinois Commerce Commission entered an order in case No. 22981 authorizing and directing an interchange in transfer passengers between the "L" lines and the surface lines, at certain points of interchange, and to establish satisfactory through routes for the transportation of passengers over the system of surface and rapid transit facilities for a trial period of one year, which was afterwards extended from time to time by order of the commission. It was further ordered by the commission that a joint rate of not to exceed ten cents for a single adult fare for this through route use of the combined facilities be charged, that the revenues realized from the use of the combined facilities by passengers be accounted for separately from other company revenues, that the companies negotiate for an agreement between them as to a proper division of this joint revenue and that if the parties should be unable to agree upon such division supplemental hearings should be conducted by the commission to determine an equitable and reasonable division of the joint revenues. An amended order was entered in the same case on July 22, 1935 adding points of transfer but in other respects the order of June 5, 1935 remained substantially the same.

By a supplemental order entered by the commission in the same case on November 6, 1935 Chicago Rapid Transit Company and Chicago Motor Coach Company were authorized and directed to provide for interchange of transfer passengers between their two systems at certain points of interchange upon payment of a single joint fare of ten cents for the use of the combined facilities for a trial period of one year, which was subsequently extended from time to time as in the case of the order affecting the "L" lines and surface lines. Provision was made in this order for accounting and for negotiations for an agreement as to the proper division

of the joint revenue and for supplemental hearings to determine an equitable and reasonable division of the joint revenues in case the parties were unable to agree, just as in the order affecting the interchange of passengers between the "L" lines and the surface lines.

The companies involved were unable to agree upon a proper division of their respective joint revenues collected pursuant to the orders of the commission and the commission conducted supplemental hearings thereon which resulted in an order entered on July 23, 1937 in which it was found that the reasonable and equitable division of each ten cent fare collected respectively by the surface lines and the "L" lines should be four cents to the surface lines and six cents to the "L" lines and ordered a division of the funds realized from fares paid by passengers using their combined facilities accordingly. No final order has been entered affecting a division of the revenues as between the "L" lines and the motor coach lines.

An appeal from the order of the commission in respect of the division of fares collected was taken by the surface lines as well as the "L" lines, both being dissatisfied with the order of the commission, but thereafter the companies involved settled their differences by compromising their claims. The settlement agreement provided for payment of $1,219,807 to the trustees of the "L" lines out of the joint revenues collected by the surface lines for the period from September 22, 1935 to June 30, 1938. It was also agreed in effect that after June 30, 1938 the joint revenues collected were to be divided between the surface lines and the "L" lines in the ratio of forty per cent to the surface lines and sixty per cent to the "L" lines with a deduction of eight per cent of the amount due the "L" lines if paid by the surface lines within thirty days after the end of each month during which such joint revenues are collected. In the petition addressed to the District Court of the United States for approval of this agreement it was stated:

> "* * * In effect this places the division on a percentage basis of approximately 58.6-41.4 i. e. 58.6% to the Trustees [of the "L" lines] and 41.4% to the receivers [of the surface lines] of the total joint revenues collected by both parties."

It is not clear if the percentages named govern the agreement for payment of $1,219,807 by the surface lines to the "L" lines for the period from September 22, 1935 to June 30, 1938. However, the District Court of the United States entered an order on September 30, 1938 approving this agreement.

The auditor for the trustee of Chicago Rapid Transit Company now proposes to pay the compensation due the city under the ordinance herein first mentioned (Northwestern Elevated Railroad Company, January 8, 1894) by allocating to the Northwestern "main line" a proper portion of the lump sum paid by the surface lines to the "L" lines for the period from September 22, 1935 to June 30, 1938, as well as a proper portion of the "L" lines' share of the total joint revenues from transfer passengers collected from July 1, 1938. There can be no controversy between the city and the trustee of Chicago Rapid Transit Company on this score because the ordinance of January 8, 1894 provides for payment of compensation on the basis of "gross receipts from the operation of said road and branches." There is no doubt that the receipts of Chicago Rapid Transit Company from the sources indicated are part of the gross receipts from the operation of the "L" lines, part of which arose from the operation of the Northwestern "main line."

As to the compensation due the city pursuant to the agreement of July 6, 1896 on the basis of the gross receipts from "loop line" rents the auditor for the trustee of Chicago Rapid Transit Company distinguishes the receipt of the lump sum of money paid by the surface lines in settlement of the claim of the "L" lines against joint revenues from transfer

passengers collected up to June 30, 1938 from its receipts of its share of the joint revenues for transfer passengers from July 1, 1938. In his communication on the subject above referred to he states that the compromise settlement was made without reference to the merits of the controversy in question; without any specific reference to passengers carried or services performed; that the settlement was made to supply necessary cash for the operation of the railroad to reimburse it for loss in revenue and to repay it for additional expenses incurred because of transfer traffic; that it was not an amount based upon a definite number of passengers and therefore as such cannot be subject to the rental charge which each road has to pay to the loop for every paying passenger carried on its line; that it is not loop income and hence not subject to the compensation provision.

We cannot agree with the conclusion reached by Mr. Seymour, auditor for the trustee, nor with the reasons given by him for his conclusion.

At the time the rental to be paid by each lessee of the "loop line" was fixed at one-half a cent for each paying passenger (June 22, 1896) the rates of fare for elevated transportation charged by each of the lessees was five cents. In subsequent years transfer privileges were accorded to passengers by the various elevated railroad companies without payment of additional fares and after consolidation of all "L" lines in the control of Chicago Rapid Transit Company the rates of fare were changed from time to time by the Illinois Commerce Commission and on June 5, 1935, when the Illinois Commerce Commission ordered an interchange in transfer passengers between the "L" lines and the surface lines, the rate of fare for a continuous ride on the "L" lines within the city of Chicago was ten cents. The effect of the order of June 5, 1935 was to reduce the rate of fare for a continuous ride on both surface lines and "L" lines to a joint rate of ten cents instead of two single rates of fare aggregating seventeen cents of which seven cents was the established rate for a continuous ride on the surface lines.

In all the time during which the rates of fare were subject to change the rental for use of the "loop line" remained constant, that is to say, one-half a cent for each paying passenger. By the agreement between the Union Elevated Railroad Company and the Union Consolidated Elevated Railway Company on the one part and the city of Chicago on the other the rental charges for the use of the "loop line" could not be changed below the prescribed rate of one-half a cent for each paying passenger. So, it is immaterial whether the revenue per passenger carried on the "L" lines is ten cents, six cents or less, and it is immaterial whether the revenue per passenger is sufficient or insufficient to meet the cost of carrying such passenger.

The motives of the parties to the settlement agreement or the circumstances which prompted the offer and acceptance of the lump sum of $1,219,807 in settlement of the claim of Chicago Rapid Transit Company against the surface lines have nothing to do with the case. The determining factor is whether the lump sum received by the "L" lines as the result of such settlement is revenue derived from fares paid by "L" passengers. The term "paying passenger" used in the contract dated December 19, 1894, which is the basis for payments required to be made by each lessee of the "loop line," undoubtedly was used to exempt such lessees from payment of one-half a cent for each person carried free by each lessee. The contract ordinances authorizing the lessee companies to operate elevated railroads in the city of Chicago prior to December 19, 1894 contain provisions that policemen and firemen in uniform, and in some cases letter carriers in uniform, shall be entitled to ride free of charge. (Special Ordinances of Chicago (Hoover) 1915, pp. 1163-4, 1238, 1248, 1291, 1350.)

There can be no serious doubt that the sum of $1,219,807 paid by the surface lines to the trustees of Chicago Rapid Transit Company was the latter's share of the joint revenues collected from passengers using the combined facilities of surface and "L" transportation who, for convenience, are called transfer passengers. The order of the United States District Court approving the settlement specifically states that the sum shall be paid "out of the joint revenues collected on the Chicago Surface Lines for the period from September 22, 1935 to June 30, 1938. These passengers were not carried free by either surface lines or "L" lines. Every transfer passenger paid an undetermined part of ten cents for his "L" line ride and an undetermined part of ten cents for his surface line ride.

We are of the opinion that the trustee of Chicago Rapid Transit Company is liable to the city for compensation for the use of the "loop line" on the basis of one-half a cent for each cash paying passenger and transfer passenger carried by the "L" lines. Undoubtedly there is a record of the number of transfer passengers originating on the surface lines which were carried over the "L" lines without reference to the sum of money received in the settlement referred to; but if there is no such record, it should not be difficult to ascertain the number of such passengers represented by the sum of $1,219,807 paid to the "L" lines out of the joint revenues collected by the surface lines.

COMPENSATION BY TELEGRAPH COMPANIES

(No. 10272—J. F. G.—May 16, 1940.)

Telegraph companies are liable for compensation fees for the use of public ways after July 8, 1938, notwithstanding that one section of the ordinance passed on July 8, 1918 provided for its expiration on July 8, 1938, since the ordinance imposing the fees was not a contract ordinance but was passed pursuant to the police power of the city.

Citations:

Statutes:	**IRS '31: 1163.**
	Act of Congress of 1866, as amended, relating to telegraph systems.
Ordinances:	**Code '31: 1163.**
	Mun. Code: 189-2.
	Coun. J. (1918-19), p. 636.
Cases:	**Springfield v. Postal Telegraph Co., 253 Ill. 346 (1912).**
	City of Peoria v. Postal Telegraph Co., 274 Ill. 568 (1916).

Opinion No. 10304 of July 2, 1940 holds substantially the same as the above opinion.

INSPECTION OF AIRLINE ELECTRICAL EQUIPMENT

(No. 10308—Acting Commissioner of Streets and Electricity—J. J. D. —July 3, 1940.)

An airline company is not immune from securing a city permit for installation of electrical equipment in its office building nor from inspections thereof notwithstanding the airline is a public utility

subject to jurisdiction of the Illinois Commerce Commission, since the purpose of the inspection is to avoid "fire" and "shock" hazards.

Citations:
Statute: IRS '39, 24: 683(a, b, c, d).
Case: City of Chicago v. Alton RR. Co., 355 Ill. 65 (1934).

OPINION OF FOREGOING SYNOPSIS

This will acknowledge receipt of your request of recent date for an "opinion as to whether the air lines coming into Chicago have the immunity granted in the enabling act of Illinois which grants such immunity to public utilities and common carriers which are under the jurisdiction of the Illinois Commerce Commission."

The enabling act referred to by you is entitled "Electrical Equipment" and appears as chapter 24, section 683, a, b, c and d, page 542, Illinois Revised Statutes, 1939. Section 1 of the statute reads as follows:

> "683 a. 'Electrical equipment' defined. Sec. 1. The term 'electrical equipment' as used in this Act means conductors and equipment installed for the utilization of electricity supplied for light, heat or power, but does not include radio apparatus or equipment for wireless reception of sounds and signals and does not include apparatus, conductors and other equipment installed for or by public utilities, including common carriers, which are under the jurisdiction of the Illinois Commerce Commission, for use in their operation as public utilities."

Section 2 provides for the creation of an electrical inspection department and an electrical commission. Section 3 sets up the standards, types of permits and fees to be charged. Section 4 contains penalties for violation of the act.

We understand from your Mr. Talbot that the request for this opinion arose out of the refusal of the Northwestern Air Lines to secure a city permit and consent to an inspection by a city inspector of electrical equipment installed for the purpose of supplying electric lighting service in their office building. Mr. Talbot further informs us that the purpose of this inspection is to avoid "fire" and "shock" hazards. This being the fact it is our opinion that the purpose of the inspection would come clearly within the police power of the city.

A situation somewhat similar was involved in the case of *City of Chicago* v. *Alton R. R. Co.*, 355 Ill. 64, 73, 74 (1934). In that case the city attempted to conduct an inspection of the passenger and freight elevators in three buildings, owned and occupied by the railroad company. The railroad company refused to permit the inspection and declined to pay the fee in connection therewith alleging that the authority of the city had been superseded by the passage of the Public Utilities Act. The Supreme Court, in overruling the railroad's contention, said:

> "We are asked to extend the repeal of police powers of cities and villages and to hold that all the property belonging to the railroad, because of that ownership alone, is placed by the Public Utilities act under the control and regulation of the Commerce Commission. In effect such a holding would mean that all of the police powers of cities and villages over public utility property has been impliedly repealed.
>
> "* * * To effectually carry out the purpose of the Public Utilities act does not require us to hold that the Commerce Commission shall regulate buildings used or to be used in the future by the rail-

road or the elevators now in use by it, or to further hold that by implication these regulatory powers were repealed and withdrawn from the city. There is no overlapping of authority. There is nothing repugnant in permitting the city to continue to exercise its police powers for the safety of the public against fire and other hazards in the one case, and from imperfect and faulty construction or maintenance of elevators in the other case. This will not interfere with full supervision by the Commerce Commission of public utility service or tend to defeat the purpose of the act."

We are informed that the Northwest Airlines, Inc. is not now operating under any certificate of convenience and necessity issued by the Illinois Commerce Commission. But assuming for the sake of this opinion that it was subject to the provisions of the Public Utility Act of this state, the inspection of electrical light equipment for the purpose of preventing fire and shock hazards would not, in our opinion, conflict with the provisions of that act.

Basing our conclusion upon the decision of the court in the above case we are of the opinion that the Northwest Airlines, Inc. is obligated to secure the necessary permit and to submit its electrical light equipment to city inspection in accordance with the ordinance provisions governing the same and we are further of the opinion that insofar as this phase of its property is concerned the Northwest Airlines, Inc. is not entitled to the immunity referred to by you.

RELOCATION OF UTILITY PROPERTY BECAUSE OF WATER MAIN INSTALLATION

(No. 10355—Commissioner of Public Works—J. F. G.—October 17, 1940.)

The rights of public utilities in the streets are subordinate to the rights of the public in the streets for any purpose consistent with street use. The city is not liable for expense incurred by a public utility in relocating its facilities on account of installation or extension of city water mains.

Citations: Brush v. Commissioner of Internal Revenue, 81 (L. ed.) 691.
People v. Chicago City Ry. Co., 324 Ill. 618 (1927).

RELOCATION OF STREET CAR TRACKS BY WPA

(No. 10413—Commissioner of Public Works—E. J. K.—February 4, 1941.)

Relocation of the street cars on Western avenue to conform to the new center line of the street as widened, is the legal responsibility of the traction company, since that company is obliged to bear the cost of relocating its tracks, including the removal of the pavement on the old track strip and at the proposed location of new street car tracks prior to the laying of these tracks. Hence, if the Work Projects Administration employees participate in such relocation, the city

would be unable to give assurances to that organization that it would not be undertaking work which either is, or has been, the legal responsibility of the traction company.

Citations:
Ordinance: Coun. J. (1939-40), p. 3009.
Case: People v. Chicago City Railway Company, 324 Ill. 618 (1927).

OBLIGATION OF SURFACE LINES TO RELOCATE STREET CAR TRACKS

(No. 10414—Commissioner of Public Works—E. J. K.—February 4, 1941.)

The Chicago Surface Lines is obliged to bear the cost of relocating their tracks and of removing the pavement on the old track strip in connection with the removal of the S. Western avenue bridge and the improvement of the street across the former west fork of the south branch of the Chicago river.

Citation: People v. Chicago City Railway Company, 324 Ill. 618 (1927).

FRANCHISE FOR ALARM SYSTEMS

(No. 10516—City Comptroller—J. F. G.—July 30, 1941.)

It is not intended either by the act of Congress of 1866 granting rights to telegraph companies or by the telephone ordinance to permit the telegraph or the telephone companies to construct or maintain wires in the city streets for use of an alarm system operated by any company not specifically authorized by the city council to use the streets for such business.

Citations:
Statute: Post Roads act of Congress 1866, as amended in 1884, USCA, Title 47, secs. 1, 5, 6.
Ordinances: Telegraph ordinance, passed Nov. 30, 1927 (Coun. J., p. 1442).
Telephone ordinance (1931-32), p. 709, secs. 1, 13.
Cases: Springfield v. Postal Telegraph Co., 253 Ill. 346 (1912).
St. Louis v. Western Union Telegraph Co., 148 U. S. 92 (1892).
City of Toledo v. Western Union Tel. Co., 107 Fed. 10 (1901).
Richmond v. Southern Bell Telephone & Telegraph Co., 174 U. S. 761, 19 Sup. Ct. 778, 43 L. Ed. 1162 (1898).
Other reference: 20 Op. Corp. Coun., p. 248 (No. 10069).

OPINION OF FOREGOING SYNOPSIS

Reference is made to your letter of March 25, 1941 requesting our opinion whether Illinois District Telegraph Company, American District Telegraph Company and Chicago Electric Protective Company may operate fire and burglar alarm and watchmen signal systems in the city of Chicago without a franchise ordinance from the city council.

Prior to June 29, 1937 the companies named operated by virtue of ordinances passed November 30, 1927 which, by their terms, expired ten years after June 29, 1927. Each of the companies was authorized to maintain and operate a line of wires for the transmission of signals by electricity and was obligated to pay to the city compensation for this privilege. The ordinances were accepted by each of the companies. The resulting contractual relations between the city and the companies were dissolved automatically when the council refused to renew the privileges upon expiration of the term fixed in the ordinances. Since then these companies have conducted their business as usual by leasing all necessary wires from Western Union Telegraph Company, Postal Telegraph Cable Company, and Illinois Bell Telephone Company.

It is believed, also, that the alarm signal companies have some wires of their own in the public ways which connect facilities in private premises with the leased wires, but in the view which we take of this case verification of this fact is not immediately necessary.

In an opinion rendered by this department at your request, on August 4, 1939, we held that without a supporting ordinance the city has no claim for compensation from the alarm signal companies. We then ventured to say also that whether or not these companies have the right to continue their operations is a question that is not before us.

The right to conduct a lawful business in the city is inherent in every person, subject to the right of the city to license, tax and regulate the business pursuant to authority granted by state law. This right does not, however, authorize the use of public ways for private gain without legislative sanction directly given or conferred through municipal action. (*Springfield* v. *Postal Telegraph Co.,* 253 Ill. 346, 352 (1912).)

The alarm signal companies no doubt claim that they are not using the public ways of Chicago for the conduct of their business, but that they are using the facilities of public utilities authorized to use the public ways of the city. This presents the issue necessary for decision. Have Western Union Telegraph Company, Postal Telegraph Cable Company, and Illinois Bell Telephone Company, or any of them, the right to use the public ways of Chicago for maintenance of lines of wires for the exclusive use of a company operating an alarm signal system?

Western Union Telegraph Company and Postal Telegraph Cable Company base their rights in the streets of Chicago upon the Post Roads Act of Congress of 1866, as amended in 1864 (U. S. C. A., Title 47). This act provides that any telegraph company organized under the laws of any state shall have the right to construct, maintain and operate lines of telegraph over and along any of the military or post roads of the United States (Section 1). Before any telegraph company may exercise the privileges conferred by law it is required to file a written acceptance with the postmaster general of the restrictions and obligations required by law (Section 5). The rights and privileges granted under the provisions of sections 1 to 5 may not be transferred by any company acting thereunder to any other corporation, association or person (Section 6).

Postal Telegraph Cable Company was incorporated under the laws of Illinois and accepted the Post Roads Act of Congress. (*Springfield* v. *Postal Telegraph Co.,* 253 Ill. 346, 351 (1912).)

Western Union Telegraph Company was incorporated under the laws of the State of New York and also accepted the terms of the Post Roads Act of Congress. (*St. Louis* v. *Western Union Telegraph Co.,* 148 U. S. 92, 94-5 (1893).)

By an Act approved June 18, 1872 all letter carrier routes established in any city or town for the collection and delivering of mail matter by carriers were declared by Congress to be post roads. (*City of Toledo* v. *Western Union Tel. Co.,* 107 Fed. 10 (1901).)

In the case last cited the United States Circuit Court of Appeals for the Sixth Circuit held that a telegraph company operating under the privileges granted to it by the Act of Congress of 1866 has no right to install a district telegraph system consisting of a fire and burglar alarm and night watchmen signal system. The court said (page 15):

> "* * * We think the business of a district telegraph company does not come within the privileges granted by the act, and it cannot, as an incident in procuring messages to be sent, be privileged more than a telephone service, for same purpose, to which it has been held by the supreme court the act has no application. *City of Richmond* v. *Southern Bell Telephone & Telegraph Co.,* 174 U. S. 761, 19 Sup. Ct. 778, 43 L. Ed. 1162."

If a telegraph company has no right by virtue of the Act of Congress of 1866 to install a fire and burglar alarm and watchmen signal system it has no right to maintain wires in the streets of the city for the exclusive use of a lessee who is engaged in the business of operating such a signal system without authority from the city council which has control of the use of the public ways of the city.

Illinois Bell Telephone Company was incorporated under the laws of Illinois and maintains and operates a telephone system in the city of Chicago by virtue of an ordinance passed July 30, 1931. Section 1 of that ordinance (Coun. J., p. 709) grants permission and authority to Illinois Bell Telephone Company to construct, maintain and operate "in, upon, along, across, under and over the streets, alleys, viaducts and elevated roadways and other public ways of the city, * * * its lines of poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures and equipment, and to use its said property for the transmission of sound and signals or other means of communication by means of electricity (including television)." It will be noted that by the ordinance Illinois Bell Telephone Company is authorized to use its property for "the transmission of sound and signals." It is not authorized to lease any of its lines to any other company for use by the lessee for the transmission of sound and signals although, by section 13 of the ordinance (Coun. J., p. 716), all the rights and privileges granted to the Illinois Bell Telephone Company may pass to its legal successor or by assignment to any corporation organized under the laws of Illinois acquiring the plant and property of the company located within the city, provided that the successor or assignee shall have filed with the city clerk its acceptance of the terms and conditions of the ordinance granting rights to the Illinois Bell Telephone Company.

Our opinion is that it is not intended, either by the Act of Congress of 1866 granting rights to telegraph companies or by the ordinance of July 20, 1931 granting rights to the Illinois Bell Telephone Company, to permit the telegraph companies or the telephone company to construct or maintain wires in the streets of Chicago for use as an alarm signal system operated by any company not specifically authorized to use the streets of Chicago for such business.

LIABILITY OF COMPANY ENGAGED IN TRANSMITTING AIR RAID WARNINGS

(No. 10637—Chief of Communications, Office of Civilian Defense—H. R. P.—May 8, 1942.)

Companies participating voluntarily in a joint communication system for the transmission of confidential air raid "alerts" to vital industries in the Chicago Metropolitan Area would be liable only for damage caused (1) because of failure to exercise reasonable or ordinary care and (2) where the damage was the direct result of such failure.

Citations:

Cases: Kenna v. Calumet H. & S. E. R. Co., 284 Ill. 301 (1918).
Perryman v. Chicago City Ry. Co., 242 Ill. 269 (1909).
Wolff Mfg. Co. v. Wilson, 152 Ill. 9 (1894).
Van Cleef v. City of Chicago, 240 Ill. 318 (1909).
Sycamore Preserve Works v. C. & N. W. Ry. Co., 366 Ill. 11 (1937).

Other reference: 45 Corpus Juris, sec. 18.
38 Amer. Jur., sec. 17.

OPINION OF FOREGOING SYNOPSIS

We are in receipt of your letter of April 21, 1942 in which you advise us of the contemplated participation of certain companies in a joint communication system for the transmission of confidential air raid "alerts" to all vital industries in the Chicago metropolitan area. You request an opinion as to the legal liability of these anticipating companies for damages caused because of a failure to transmit such an alarm.

This question must be viewed in the light of the existing war emergency, the voluntary character of the service to be rendered, the absence of any private or profit motive in its rendition, the great benefits accruing to those receiving it, and the valuable contribution this service will make to the national war effort.

Generally, one who undertakes to do an act or perform a service for another is bound to use reasonable care and skill in the performance thereof and is liable for failure in this respect even though the undertaking was purely voluntary.

45 C. J., Sec. 18, p. 646, and cases there cited.
38 Amer. Jur., Sec. 17.

The care to be exercised is reasonable, ordinary, or due care, which under the same or similar circumstances would ordinarily or usually be exercised by an ordinarily prudent person.

Perryman v. *Chicago City R. Co.,* 242 Ill. 269.
L. Wolff Mfg. Co. v. *Wilson,* 152 Ill. 9.

Moreover, the injury for which recovery is sought must be the legitimate consequence of the wrong done. It must be the proximate and not the remote cause of the injury to make the cause actionable.

Van Cleaf v. *City of Chicago,* 240 Ill. 318.
Sycamore Preserve Works v. *City of Chicago,* 366 Ill. 11.

It would appear, therefore, that the companies participating in the plan outlined would be liable for any damage caused (1) because of a failure to exercise reasonable or ordinary care, and (2) where the damage was the direct result of such failure.

Inasmuch as one cannot contract against his own negligence (*Kenna* v. *Calumet H. & S. E. R. Co.,* 206 Ill. App. 7; Aff'd 284 Ill. 301) we doubt whether a waiver signed by the participating companies would be of any effect in excusing damages resulting from such negligence.

Courts, however, cognizant of the exigencies created by the present war emergency, and mindful of all the elements hereinbefore mentioned, would, in our opinion, tend toward great liberality in determining whether ordinary care had been exercised in a given situation. Thus, in the absence of gross or wanton negligence, we feel that courts would deny liability in this situation. This, together with the extreme difficulty in establishing a causal connection between the failure to transmit the alarm and the resulting damage, would make the successful prosecution of any claim from this source improbable.

SECTION III

MANAGEMENT OF THE MUNICIPAL CORPORATION

CHAPTER XI

FINANCE

A. APPROPRIATIONS AND TAXES

CITY TAX ON REINSURANCE

(No. 10189—Chairman, Council Committee on Finance—L. L. K.—February 1, 1940.)

The city is not authorized to require a license tax on reinsurance of fire insurance under the present ordinances or statutes, since the city can collect this tax only on gross receipts from fire insurance, and reinsurance is not fire insurance.

Citations:
Statute: IRS '39, 24: 669.
Ordinance: Mun. Code: 131-1, 131-6.
Cases: People ex rel. City of Chicago v. Commercial Union Fire Insurance Co. et al., 322 Ill. 326 (1926).
Weil v. Federal Life Insurance Co., 264 Ill. 425 (1914).
Vial v. Norwich Fire Insurance Society, 257 Ill. 355 (1913).

ACQUISITION OF TAX FORFEITED PROPERTY FOR PLAYGROUND PURPOSES

(No. 10212—Alderman, 9th Ward—O. S. F.—March 1, 1940.)

The city does not have the power to purchase tax forfeited property for playground purposes at a tax sale. The city may, however, become purchaser of such property at foreclosure sale, if such property is required for its corporate purposes. The city would not acquire good title until two years after date of foreclosure sale, during which time the original owner has a right to redeem. Upon expiration of the redemption period, the city is entitled to a deed which would convey good title, and the city would not be entitled to possession until it received said deed.

Citations:
Constitution: Ill. article IX, section 5.
Statutes: IRS '39, 24: 183.
Revenue Act of 1939, secs. 216, 246, 272, and 275.
Case: City of Champaign v. Harmon, 98 Ill. 491 (1881).

USE OF TAX DELINQUENT LANDS FOR RECREATIONAL PURPOSES

(No. 10305—Chicago Recreation Commission—J. F. G.—July 3, 1940.)

The city may acquire possession to tax delinquent lands by deed from the sheriff after expiration of the period of redemption from sale of the property pursuant to a judgment or decree of court.

Both the city and the park district could bid in on sales made in two classes of cases: (1) after levy of execution pursuant to a judgment in a suit for taxes for forfeited realty brought by the city, county, or park district; or (2) after decree in foreclosure proceedings brought in the name of the state when the taxes for two or more years have been forfeited to the state.

Until the sheriff's deed is executed, delivered and recorded pursuant to law, the right of the city or park district is that of a lien on the property without an incident right to possession.

Citation: IRS '39, 120: 697, 756.

AMENDING ANNUAL APPROPRIATION BILL

(No. 10325—Board of Directors, The Chicago Public Library—J. F. G. —August 5, 1940.)

Neither the city council nor the city comptroller may revise appropriations for the library fund contained in the annual appropriation bill, after its passage by the council and expiration of the time allowed for amendments thereto, notwithstanding that the estimate of assets included a surplus from a prior tax levy to which objections had been filed in court.

Citations:
Statute: Cities and Villages act, art. VII, secs. 2a, 17.
Case: People v. Diversey Hotel Corporation, 364 Ill. 298 (1936).

EMPLOYMENT PENDING PASSAGE OF APPROPRIATION ORDINANCE

(No. 10402—City Comptroller—J. F. G.—January 14, 1941.)

Under a continuation ordinance providing for the employment of officers and employees as needed "pending the passage" of the annual appropriation bill for the year 1941, employees may be continued on the rolls, if the head of the department deems their services necessary, until the appropriation ordinance becomes effective.

Citations:
Statutes: Cities and Villages act, art. VII, sec. 4.
IRS '39, 24: 102.
Other references: Op. Corp. Coun. (1915-16), p. 314.
Op. Corp. Coun. (1916-17), p. 594.

FILING OF CERTIFIED COPY OF TAX LEVY ORDINANCE

(No. 10409A—City Comptroller—J. F. G.—January 24, 1941.)

Under present laws there is no provision which is applicable to taxing bodies containing 500,000 inhabitants or more which specifies any date for the filing of the certified copy of the tax levy ordinance, unless it be the provision in section 1 of article VIII of the Cities and Villages Act which permits the city council in cities containing more than 500,000 inhabitants to levy the tax prior to March 28th in each year.

This section supersedes section 122 of the Revenue Law as amended in 1873.

Citations:
Statutes: Revenue Law '39, sec. 157.
Cities and Villages Act, art. VIII, sec. 1.
Cases: City of Cairo v. Campbell et al., 118 Ill. 305 (1886).
Barnett v. County of Cook, 373 Ill. 516 (1940).

PAYROLLS PENDING CHANGE IN DEPARTMENTAL APPROPRIATION

(No. 10411—Board of Health, President—A. F. G.—February 3, 1941.)

In view of the council authorization to department heads to employ such employees as were needed who were employees at the close of 1940, the board of health should approve payrolls of certain employees employed from January 1st, to the effective date of the annual appropriation ordinance, notwithstanding that the appropriation for such employees was included with the 1941 appropriation for the department of buildings rather than for the board of health.

Citation: Coun. J. (1939-40), p. 3666.

ACCEPTANCE OF TAX DELINQUENT LAND

(No. 10422—Commissioner of Public Works—E. J. K.—February 17, 1941.)

Dedication of a street should not be accepted by the city until all general taxes and special assessments upon said land have been paid.

Citation: IRS '39, 120: 516.

WITHHOLDING TAX MONIES FOR ELECTION EXPENSES

(No. 10466—City Comptroller—J. F. G.—April 23, 1941.)

When the county collector has withheld tax monies due the city as payment of the city's proportionate share of election expenses paid by the county, the holders of tax anticipation warrants may compel the county collector to pay to the city treasurer, as trustee for the warrant holders, the tax monies which stand as security for the tax anticipation warrants. The county's claim is general and is subordinate to the lien of tax anticipation warrant holders.

Citations:

Statutes: Election Law of 1872, sec. 75.
Ballot Law of 1891, sec. 2.
Ill. Laws (1933), pp. 546, 578.

Cases: Bolles v. Prince, 250 Ill. 36 (1911).
People v. Bowman, 253 Ill. 234 (1911).
Johnson v. County of Winnebago, 256 Ill. 276 (1912).
People v. Board of Commissioners, 345 Ill. 172 (1931).
Jacob v. City of Peoria, 345 Ill. 222 (1931).
City of Springfield v. Edwards, 84 Ill. 626 (1877).
Booth v. Opel, 244 Ill. 317 (1910).
Berman v. Board of Education, 360 Ill. 535 (1935).
Leviton v. Board of Education, 374 Ill. 594 (1940).
People v. M. Born & Co., 373 Ill. 490 (1940).

Other reference: 18 Op. Corp. Coun. (1929-35), p. 84 (No. 8525).

OPINION OF FOREGOING SYNOPSIS

With your letter of March 27, 1941 you transmitted certified copy of resolutions adopted by the Board of Commissioners of Cook County at a meeting held March 5, 1941. These resolutions instructed the county collector to withhold the sum of $269,133.83 for election expenses assumed and paid by Cook County and claimed to be chargeable to the city of Chicago. We have not been informed as to the nature of the election expense involved and cannot, therefore, pass upon the propriety of the amount charged to the city.

In your letter of March 31, 1941 you pointed out that the deduction made by the county treasurer makes no specification as to which taxes are affected and inasmuch as there are tax warrants outstanding against these various levies you questioned the right of the county treasurer to withhold this money.

On October 17, 1934 we submitted to you our opinion on the subject of the legality of charges made by the county of Cook for the city's proportionate share of the cost of the salaries of judges and clerks of election and of printing ballots for an election for city and county officers at the same time and at the same polling places.

Section 75a of the Election Law of 1872, as amended, and section 2 of the Ballot Law of 1891, as amended, each similarly in substance provides that if at the end of any fiscal year any municipality has failed to pay its proportionate part of the compensation of judges and clerks of election (or the cost of printing and delivering ballots), the county clerk shall certify the amount due to the county collector and the county col-

lector shall deduct and withhold a sufficient amount from the general taxes due such municipality to pay the costs and expenses referred to and credit the amount so withheld as a fee of the county clerk. These provisions appear to have been added to the law by acts approved May 10, 1933. (L. 1933, pp. 346, 578.)

In our opinion of October 17, 1934 we considered the question whether the amendments of 1933 providing for the apportionment of the election expenses imposed a tax or obligation upon the city or its inhabitants without the consent of the corporate authorities in violation of our state constitution. Although our Supreme Court had not directly passed upon the constitutional question we concluded from the decisions in *Bolles* v. *Prince,* 350 Ill. 36, 39 (1911); *The People* v. *Bowman,* 253 Ill. 234 (1911); and *Johnson* v. *County of Winnebago,* 256 Ill. 276 (1912), that the legislature had authority to make an apportionment of the cost of elections among the county, the city, and other subdivisions of the state government.

Since the date of our opinion upon this subject, that is to say on December 27, 1935, Mr. Frank Johnston, Jr., senior assistant attorney for The Sanitary District of Chicago, advised that body that section 75a of the Election Law of 1872, as amended, is unconstitutional in so far as it purports to charge the sanitary district with its proportionate share of the election expenses because the sanitary district had not adopted the General Election Laws and had not otherwise given its consent to the imposition of a debt or of taxes upon it by the legislature in respect to the election of the trustees of the sanitary district.

If section 75a of the Election Law heretofore referred to is unconstitutional for the reasons suggested by Mr. Johnston, then section 2 of the Ballot Law should also be held unconstitutional in this respect.

In the case of *The People* v. *Board of Commissioners,* 345 Ill. 172 (1931), our Supreme Court held the county of Cook liable for the payment of furnishing, printing and delivery of ballots in the city of Chicago and other cities and villages under the jurisdiction of the board of election commissioners. In that case it was held that there was no provision in the City Election Act which provided for the payment of the expense of printing of ballots because until the Ballot Law of 1891 was passed ballots were not printed at public expense but at the expense of the candidates and the political parties. The court held that the Ballot Law of 1891 was an original, independent and complete act of the legislature which distinctly places the cost of printing ballots in certain cases upon the county and in other cases upon the incorporated town, city or village or town. That was before the amendment of 1933 which provided for the apportionment of the cost of printing and delivery of ballots at elections for state or county and city officers held at the same time.

We observe no distinction between the provision in the Ballot Law imposing an obligation upon the city to pay for the printing and delivery of ballots at city elections and a provision imposing a portion of the expense upon the city at elections for county and city officers held at the same time.

In *Jacob* v. *City of Peoria,* 345 Ill. 222 (1931), the court said:

> "The legislature has power to apportion the expense of conducting elections among governmental subdivisions and incorporated municipalities."

In view of the conflicting opinions of counsel for the city and the sanitary district the latter is in better position to attack the legality of the action of the county collector referred to in your communications. We have been informed that The Sanitary District of Chicago intends to

institute suit to compel the county collector to pay to the sanitary district the amount withheld from general tax monies due to the sanitary district. No doubt in that case the court will pass upon the specific constitutional question raised by the sanitary district.

As to the facts stated in your communication of March 31, 1941 that "the county treasurer makes no specification as to which taxes are affected" and that "there are tax warrants outstanding against these various levies," the city is entitled to the information necessary to determine what, if any, unpaid tax anticipation warrants are affected by the action taken by the county authorities. These warrants are effective as an assignment of so much of the taxes collected from the levy of the specific year in anticipation of which the warrants were issued as is equal to the par value of the warrants and accrued interest. (*City of Springfield* v. *Edwards,* 84 Ill. 626 (1877); *Booth* v. *Opel,* 244 Ill. 317 (1910); *Berman* v. *Board of Education,* 360 Ill. 535 (1935); *Leviton* v. *Board of Education,* 374 Ill. 594 (1940).)

When tax anticipation warrants are sold or accepted they become a lien upon the taxes to be collected from the specific levy against which they are issued to the extent necessary for their payment. (*The People* v. *M. Born & Co.,* 373 Ill. 490 (1940).)

As to the specific levy against which tax anticipation warrants are issued the lien of these warrants is superior to all general claims against the city payable from that tax levy. The claim of the county of Cook for unpaid election expenses is a general claim even though the statute provides that if not paid by the city at the end of any fiscal year the county collector shall deduct and withhold a sufficient amount from the general taxes due the city to pay these expenses. In our opinion, the holders of the tax anticipation warrants may compel the county collector by mandamus to pay to the city treasurer, as trustee for the warrant holders, the tax money collected which stands as security for the tax anticipation warrants.

EXPENSE OF STUDYING TUNNEL PROJECT

(No. 10468—Commissioner of Subways and Superhighways—W. H. S. —April 29, 1941.)

The commissioner of subways and superhighways may study a proposed plan for the construction of a tunnel from the airport to the "Loop" to be used for local transportation purposes, and may charge any expense involved in this study to the appropriation for the department of subways and superhighways.

Citations:

Ordinances:	**Mun. Code: 19-3.**
	Coun. J. (1940-41), p. 3973.
Case:	**Barsaloux v. City of Chicago, 245 Ill. 598 (1910).**

B. MANAGEMENT OF CITY FUNDS

ALLOCATING EXPENSES OCCASIONED BY SUBWAY CONSTRUCTION

(No. 10259—Chairman, Committee on Finance—J. F. G. & W. H. S.—April 30, 1940.)

The expense of maintaining water service and of adjusting municipally owned utilities, which are directly due to the construction of subways, is a part of the cost of such subways which may be defrayed from the traction fund. Since the operation of municipal waterworks system is distinguished from the public utilities operating pursuant to franchise, an ordinance providing for such allocations would not create a precedent for the apportionment of similar expense due to the disruption to privately owned utilities.

Citation: IRS '39, 24: 569.

ATTORNEY'S LIEN AFTER ATTORNEY'S DEATH

(No. 10270—City Comptroller—F. V. M.—May 15, 1940.)

A release of an attorney's lien, filed under the firm name of a partnership to which the names of partners are signed subsequent to the death of one whose name has been so signed, is not a good release.

Upon the death of one partner, his interest in said lien became a part of his estate subject to the order of the probate court, and the release must be executed by his administrator under authority of the Probate Court of Cook County in a specific order to that effect.

OWNERSHIP OF FISH AND GAME LICENSE FEES

(No. 10428—Chairman, Committee on Finance—M. H. F.—March 3, 1941.)

The city is entitled to that portion of the fish and game license fees which the state fish and game laws authorize the city clerk to deduct.

Citations:
Constitution: Illinois, art. 4, sec. 34.
Statutes: IRS '39, '24: 172.
IRS '39, 56: 70.
IRS '39, 61: 89.
IRS '39, 102: 20.
Ill. Laws (1923), p. 368, secs. 22, 23; p. 386, sec. 27.
Ill. Laws (1937), pp. 626, 649.

Ordinance: Mun. Code: 25-5, 25-14.
Cases: Boyer v. Onion, 108 Ill. App. 612 (1902).
Peterson v. People, 129 Ill. App. 55 (1906).
People v. Davies Company, Inc., 375 Ill. 397 (1941).
Ptacek v. Coleman, 364 Ill. 618 (1936).
Foreman v. People, 209 Ill. 567 (1904).
Duclos v. Harrison County, 291 SW (Tex. Civ. App.) 611 (1927), affirmed 298 SW 417.
In re MacDonald, 248 Fed. 983 (1917).
Mulcrevy v. San Francisco, 231 US 669 (1914).
Schuylkill County v. Wiest, 257 Pa. 425 (1917).
York County v. Frey, 290 Pa. 310 (1927).
Lewis v. United States, 244 US 134 (1917).
Other references: 46 CJ 1019.
Coun. J. (1940-41), p. 4276.

OPINION OF FOREGOING SYNOPSIS

Committee on Finance document No. 6855, transmitted with letter of February 5, 1941, is returned herewith. It consists of a resolution reciting that the city clerk of Chicago receives, in addition to his salary of $8,000 per year, fees from the sale of State fish and game licenses aggregating for the years 1937, 1938 and 1939 between $18,000 and $20,000 a year. The resolution calls upon the city clerk to turn over to the city treasury his net receipts from such fees for the year 1941 and succeeding years, and asks that the legislature be memorialized to amend the Fish and Game Acts so that the fees now retained by the city clerk may go to the municipality. Our opinion is requested as to the city receiving the net of the fees mentioned in the resoolution and the necessity of legislation to accomplish the purpose of the resolution.

Since the receipt of your communication the incumbent of the office of city clerk has appeared before the city council at its meeting held February 26, 1941 and made a formal statement, portions of which material to your inquiry, are as follows:

> "I have considered the question which has been raised as to my legal right to the fees received by me as compensation for issuance of fishing and hunting licenses on behalf of the State.
>
> "The City Clerks of Chicago for the past fifty years or more have always considered this a personal service rendered by them to the State for which they have collected the compensation allowed by the state law. Out of the compensation which they have received, the city clerks have paid for the necessary clerical services in the conduct of that business. The practice has never before been questioned.
>
> "I believe that it is desirable in the interest of both the City and myself that there should be a final decision in this matter in our courts as quickly as possible and I am holding the money awaiting the outcome of that decision. I propose that the Corporation Counsel decide what method should be used for that purpose and I agree to promptly cooperate with him. I will place no legal obstacle in the way of getting a decision of the Supreme Court of the State in this matter." (Council Journal, pages 4276-4277.)

Section 3 of Part Two of article XII, being an article relating to the City of Chicago, added to the Cities and Villages Act by an Act approved May 18, 1905, paragraph 172, chapter 24, Illinois Revised Statutes, 1939, reads in part as follows:

> "The compensation of all officers shall be by salary, as fixed in the annual appropriation bill, by the City Council, and the compensa-

tion of no officer shall be altered during the same fiscal year. No officer shall be allowed any fees, perquisites or emoluments or any reward or compensation aside from his salary, but all fees and earnings of his office or department shall be paid by him into the city treasury. * * *"

Section 25-5 of the Municipal Code of Chicago fixes the annual salary of the city clerk at $8,000.

Section 25-14 of said code requires the city clerk to file an official bond payable to the city in the penal sum of $5,000 "conditioned for the faithful performance of the duties of the office and the payment of all monies received by such officer."

Paragraph 20 of chapter 102, Illinois Revised Statutes, 1939, in relation to funds or monies received by public officers or agents of public or municipal bodies, reads in part as follows:

"It is hereby made the duty of all officers or agents of public or municipal bodies of this state, who receive any funds, monies, or other things of value, by virtue of their offices or positions, except treasurers, to keep an account of all such receipts, by entries on written or printed forms, to be provided for the purpose by the public bodies or municipalities by the authority of which their offices or positions are held. * * *

"Each month's receipts shall be separately paid over or delivered to the treasurer not later than the middle of the next succeeding month, * * *."

The Act designated the "Fish Code of Illinois" provides for the issuance of fishing licenses. The Act known as the "Game Code of Illinois" provides for the issuance of hunting licenses. The State Department of Conservation administers both Acts. The Fish Code was originally passed in 1923. (Laws of Illinois, 1923, p. 368 *et seq.*) After prescribing the amounts of the various license fees section 23 of the Act provided as follows:

"In addition to the above fees, applicants shall pay to the clerk issuing licenses a fee of twenty-five cents for each license issued."

The clerk referred to in the above quoted excerpt includes the city clerk for the reason that section 22 of said Act as originally passed provided that licenses were to be procured from county, city and village clerks upon payment of the state fee and the clerk's fee. In 1937 the Fish Code was amended so as to provide that any county, city, village or incorporated town clerk issuing licenses might "deduct the following as his or her fee for so doing." Then follows a list or series of deductions authorized to be made from the amounts of different license fees. (Laws of Illinois, 1937, pp. 626, 627.) The Fish Code was again amended in 1939 but the changes made that year have no bearing upon this opinion. As now constituted section 15 of the Act (paragraph 70, chapter 56, Illinois Revised Statutes, 1939) reads in part as follows:

"Any county, city, village, township or incorporated town clerk issuing licenses provided for in this Act may deduct the following as his or her fee for so doing: * * *."

Then follow the respective amounts of the authorized deductions.

The Game Code also was originally passed in 1923. (Laws of Illinois, 1923, p. 386 *et seq.*) Section 27 provides for the issuance of hunting licenses upon application made under oath "to any county, city or village clerk" and prescribes the amount of the fees to be paid by residents and

nonresidents of the State of Illinois, and also provides for the payment of clerks' fees for administering the oath to the applicant and issuing the license. As in the case of the Fish Code the Game Code was amended in 1937 so as to provide that the clerk might deduct his fees for issuing licenses (Laws of Illinois, 1937, p. 649) and was again amended in 1939. At the present time section 23 of said code (paragraph 89, chapter 61, Illinois Revised Statutes, 1939) reads in part as follows:

> "Any county, city, village, township, or incorporated town clerk issuing hunting licenses, or licenses to take fur-bearing animals, provided for in this Act may deduct the following as his or her fees for issuing such licenses: * * *."

Then follows a list of authorized deductions.

Comparing the above quoted section of the Cities and Villages Act (which section it will be remembered relates specifically to the City of Chicago) with the provisions of the Fish and Game Codes it might be contended, in case the city clerk were to claim that the fees were his personal property, that an apparent conflict or inconsistency existed. However, there would be little force to such contention for the reason that the established legal principle is that when inconsistencies exist between different statutes such inconsistencies should be reconciled, if possible, in order that the provisions of the several laws may stand. (*Boyer* v. *Onion* (1902), 108 Ill. App. 612; *Peterson* v. *The People* (1906), 129 Ill. App. 55.)

It is not believed that it could be successfully established that the provisions of the Fish and Game Codes repealed, substituted or amended, in so far as the city clerk of Chicago is concerned, the provisions of the compensation section of the Cities and Villages Act above quoted, for the reason that the compensation section of the Cities and Villages Act is part of the special Act relating to the City of Chicago, adopted by a referendum under section 34 of Article 4 of the Illinois Constitution, and cannot be repealed, substituted or amended without a referendum. (*The People* v. *Davies Company, Inc.* (1941), 375 Ill. 397; *Ptacek* v. *Coleman* (1936), 364 Ill. 618.)

Statutes relating to the fees and compensation of public officials are strictly construed against the public official. (46 C. J. 1019 and cases cited; *Forman* v. *The People* (1904), 209 Ill. 567, 569.) It is presumed that when an officer receives a salary for the services rendered in his official capacity that any and all fees received by him in such capacity are not received by him as an individual, but as an officer of the public corporation. (*Duclos* v. *Harrison County,* 291 S. W. (Tex. Civ. App. 1927) 611, affirmed 298 S. W. 417; *In re MacDonald* (1917), 248 Fed. 983; *Lewis* v. *U. S.* (1917), 244 U. S. 134; *Mulcrevy* v. *San Francisco* (1914), 231 U. S. 669.)

The case of *Schuylkill County* v. *Wiest* (1917), 257 Pa. 425, involved a question similar to that being considered in this opinion. The county filed a suit to recover hunters' license fees retained by the defendant Wiest as county treasurer. The State Constitution provided that "the compensation of county officers shall be regulated by law, and all county officers who are or may be salaried, shall pay all fees which they may be authorized to receive, into the treasury of the county or state, as may be directed by law." The Pennsylvania statute pertaining to hunters' licenses and fees contained the following provision:

> "Said county treasurers are herewith authorized to retain for services rendered the sum of ten cents from the amount paid by each licensee, which amount shall be full compensation for services rendered by him in each case under the provisions of this act, and shall remit all balances arising from this source, at least once a month, to the state treasurer, for the purposes otherwise provided for in this act."

Wiest contended that the services performed by him, in collecting hunters' license fees, were rendered to the State and were no part of his duties as county treasurer, but separate and distinct therefrom. The court, however, held that the fees were received by him in his official capacity, that they were not his personal funds but belonged to the county. Beginning on page 430 of its opinion the court said:

> "* * * The county treasurer, as provided in the act, is authorized to issue hunters' licenses, to collect one dollar from each applicant, to retain ten cents from the amount paid to the licensee, and remit the balance to the State treasury. The act, therefore, confers its authority on the county treasurer and not on the individual who happens at the time to be the incumbent of the office. Each step he takes to carry out the provisions of the act is in his official capacity as county treasurer. The license is issued and signed by the county treasurer in his official and not his personal capacity. By virtue of his office, and not as an individual, he collects the license fee and retains the amount for services designated in the act. It is true that the license fees are levied for and are to be paid to the State, but it does not follow that the compensation for the services rendered in issuing the licenses and collecting the fees therefor is to be paid to and for the use of the individual who, at the time, is the officer authorized in his official capacity by the statute to perform the service. * * * The presumption is that when an officer receives money for services rendered in his official capacity, it is as compensation for the performance of duties as such officer. If Wiest had not held the office of county treasurer, he could not have issued the hunters' licenses or collected the license fees, and necessarily could not have retained the designated fees for the services. He, therefore, holds the fees, received as compensation, in his official capacity as county treasurer, and under the constitutional and legislative mandates he must account for them to the County of Schuylkill.
>
> "In construing the Act of 1876 and holding that the prothonotary of Schuylkill County, a salaried officer, is not entitled to the fees authorized by the act of congress to be retained by him for the naturalization of aliens, Mr. Justice Stewart, speaking for the court in the recent case of *Schuylkill County* v. *Reese,* 249 Pa. 281, 286, said: 'These fees for services in connection with naturalization proceedings, though prescribed by federal statute, and by such statute directed to be paid to a clerk of a state court, are quite as clearly limited and appointed by law to be collected by such official as any fees prescribed by State enactment. . . . It was only by virtue of his official character, and not as an individual, that he was authorized to collect and receive these fees; he is not designated as an individual, but as an official.' * * *"

To the same effect is a later decision of the Supreme Court of Pennsylvania in *York County* v. *Frey* (1927), 290 Pa. 310, wherein the court restated the general rule that salaried officers can appropriate to their own use no fees for the performance of any duty cast upon them by law.

In *Mulcrevy* v. *San Francisco* (1914), 231 U. S. 669, the Supreme Court of the United States considered the question of the right of the county clerk of San Francisco to retain a portion of the fees received by him for naturalization of aliens as citizens of the United States. The charter of the city and county of San Francisco provided that the clerk should be paid a salary which was declared to be "in full compensation for all services rendered." It also provided that every officer should pay all money coming into his hands as such officer into the treasury of the city and county. The federal statute involved provided for naturalization proceedings in State courts and that the clerk of any court collecting naturalization fees should be authorized to retain half of the fees collected

by him. Mulcrevy received fees in naturalization proceedings because he was clerk of the Superior Court. On page 674 of its opinion the court said:

> "If it be granted that he was made an agent of the National Government, his relations to the city were not thereby changed. He was still its officer, receiving fees because he was—not earning them otherwise or receiving them otherwise, but under compact with the city to pay them into the city treasury within twenty-four hours after their receipt.
>
> "* * * Mulcrevy was elected to an office constituted by the municipality under the authority of the State. He was given a fixed salary of $4,000 with the express limitation that it should be his complete compensation. He agreed that all other moneys received by him officially should be paid into the treasury of the city. He was given office accommodations, clerks to assist him, and yet contends that notwithstanding such equipment and assistance, notwithstanding his compact, he may retain part of the revenues of his office as fees for his own personal use. We cannot yield to the contention. * * *"

In *Lewis, Executrix* v. *United States* (1917), 244 U. S. 134, an executrix sued to recover the sum of $2,000 salary claimed to be due a decedent from the United States as surveyor general of Louisiana and to recover the further sum of $2,287.80 claimed to belong to the decedent as perquisites of this office and paid over his protest into the treasury of the United States. The last mentioned sum comprised statutory fees charged for copies of plate and transcripts of record. A custom had been established by the decedent and his predecessors to retain such fees. The federal statute provided that: "No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay." The court held that the fees did not belong to the claimant, but to the United States.

Relying upon the authorities herein referred to, our opinion therefore is that the City of Chicago is entitled to the portion of the fish and game license fees which the Fish and Game Codes authorize the city clerk to deduct.

USE OF VEHICLE TAX FUND FOR REPAIR OF W.P.A. STREETS

(No. 10457—Alderman, 41st Ward—E. J. K.—April 16, 1941.)

The vehicle tax fund may be used for the improvement or repair of any streets or alleys in the city which the city council sees fit to designate, including the repair of W.P.A. improved streets.

Citations:
Statute: IRS '39, 24: 671.
Ordinance: Mun. Code: 29-12.
Other references: 12 Op. Corp. Coun. (1923-24), p. 729.
13 Op. Corp. Coun. (1924-25), pp. 36, 408.
15 Op. Corp. Coun. (1925-26), p. 37.
16 Op. Corp. Coun. (1926-27), p. 417 (No. 6141).
20 Op. Corp. Coun. (1938-39), p. 100 (No. 9904).

WARRANTS AGAINST TRACTION FUND

(No. 10469—Acting Commissioner of Streets and Electricity—J. F. G. —April 30, 1941.)

If a warrant for collection against the traction fund for expenditures made by the department of streets and electricity and charged originally to the vehicle tax fund, is to defray the cost of the purchase or construction of street railways by the city or for the construction, acquisition or maintenance of subways, it should be approved for payment.

Citations:
Statute: IRS '39, 24: 569c, 569d.
Ordinance: Hoover's Spec. Ord. of Chicago (1915), pp. 1424, 1509, 1560, 1657.
Case: Barsaloux v. City of Chicago, 245 Ill. 598 (1910).

USE OF TRACTION FUND TO REMOVE MUNICIPAL UTILITIES

(No. 10520—Commissioner of Streets and Electricity—A. J. R. & W. H. S.—August 14, 1941.)

Such work of removing and restoring municipally owned and operated street lighting, traffic signal and fire alarm—police telegraph equipment as is a necessary incident to the construction of the subway is properly chargeable to the traction fund appropriation. The determination of how much constitutes replacement in kind and how much constitutes betterments and the costs thereof are engineering rather than legal problems.

Citations:
Ordinance: Coun. J. (1940-41), pp. 3975, 4362.
Case: Barsaloux v. City of Chicago, 245 Ill. 598 (1910).

OPINION OF FOREGOING SYNOPSIS

We have your letter of July 15th with accompanying blue print of your drawing A-4272, dated July 11, 1941, and your answers to a questionnaire prepared by us showing the work incident to removal and restoration of municipally owned and operated street lighting, traffic signal and fire alarm-police telegraph equipment caused, as you say, by subway construction in North and South Dearborn street from West Washington street to West Adams street, the estimated cost of which work you state to be $26,000.00;

Also your letter of the same date, with accompanying blue print of your drawing A-4273, showing similar work in South Dearborn street, from West Adams street to West Van Buren street, the estimated cost of which work you state to be $23,000.00;

Also your letter of the same date, with accompanying blue print of your drawing A-4274, showing similar work in North State street, from Lake street to Madison street, the estimated cost of which you state to be $26,000.00;

Also your letter of the same date, with accompanying blue print of your drawing A-4275, showing similar work in South State street from Madison street to Adams street, the estimated cost of which work you state to be $16,000.00;

Also your letter of the same date, with accompanying blue print of your drawing A-4276, showing similar work in South State street from Adams street to 11th street, the estimated cost of which work you state to be $36,000.00.

You request our opinion as to whether the cost of these several items of work may properly be charged against Account 364-S-10 in the 1941 appropriation from the traction fund.

The appropriation for said account No. 364-S-10 in the annual appropriation bill for 1941 was as follows (C. J., p. 3975):

> "For the cost and expense of supporting, protecting, maintaining, removing, replacing, relocating, rearranging, adjusting, repairing, altering, restoring, or reconstructing city-owned electric conduits, cables, vaults, and appurtenances incident to the construction of the city-owned Initial System of Subways for local transportation purposes: To be
> 364-S-10 expended upon direction of the City Council.....$270,000.00."

The necessary directions for the expenditure of the money thus appropriated was given by the city council on March 5, 1941 (C. J., p. 4362).

It will be noted that the appropriation bill does not specify the particular items of work for which this money may be expended, but merely states that it must be work

> "incident to the construction of the city-owned Initial System of Subways for local transportation purposes;"

and as our Supreme Court has held (*Barsaloux* v. *City of Chicago,* 245 Ill. 598) that:

> "clearly the city would have no power to divert this fund to general corporate purposes;"

it is our opinion that the cost of the work in question can legally be charged against the subway fund only if said work was necessitated by the construction of the subway.

In regard to the work mentioned in your letters, we note that the commissioner of subways and superhighways makes these comments in his letter to you of the 7th instant (a copy of which was sent to this office):

> "A-4272 TO A-4276 INCLUSIVE
>
> "The work proposed under the above headings consists of the construction of a complete new and enlarged system by the Bureau of Electricity in Dearborn Street between Lake Street and Van Buren Street and in State Street between Lake Street and 11th Street. Tunnels have been constructed along the above sections of both Dearborn Street and State Street, but the construction of tunnels has not required any relocation of underground utility facilities. The only work which has been undertaken by this Department which required underground utility restoration is at the mezzanine stations which occupy

a limited length in the center of each block on State Street and in the center of each block on Dearborn Street from Randolph Street to Van Buren Street.

"However, your Department is planning the reconstruction of pavements on both thoroughfares and it is our understanding that all of the utilities are planning a systematic restoration of their facilities. This restoration work is, in our opinion, occasioned to only a limited degree by the construction of subway stations which is entirely secondary to the desire of utilities to rehabilitate all of their facilities within the central business district particularly in advance of paving projects.

"Therefore, suggest that the cost of this work proposed to be charged to the Traction Fund be apportioned in the ratio that the length of street disturbed by subway station construction bears to the entire length of the restoration work proposed. * * *

"Conclusion.

"We suggest that the question of how much of the work proposed by the Bureau of Electricity constitutes a replacement in kind and how much constitutes additions and betterments should be determined in advance of the payment of any portion of the cost from Account 364-S-10 in the 1941 appropriation from the Traction Fund for it is our opinion that the charges made to this fund should be limited to the cost of replacements in kind."

There is in our opinion no doubt that the cost of the work in question is chargeable to Account 364-S-10 in so far as the work is a necessary incident to the construction of the subway. But under the facts above set forth it becomes an engineering question rather than a legal question what portion of the work contemplated constitutes a necessary incident to the construction of the subway and what the reasonable cost thereof would be. We believe that the engineers of your department and those of the subway department should get together and adjust their differences in this regard.

Opinion No. 10519, dated August 13, 1941, to the Commissioner of Streets and Electricity holds substantially the same as the above opinion.

USE OF TRACTION FUND FOR RELOCATION OF WATER PIPES BECAUSE OF SUBWAY

(No. 10522—Commissioner of Public Works—A. J. R. & W. H. S.—August 25, 1941.)

When the relocation of a water main and service pipes is necessary because of the construction of a subway mezzanine station, the reasonable cost of the work may be properly charged against the traction fund appropriation.

Citations:

Statute: IRS '39, 24: 569c, 569d.
Ordinances: Coun. J. (1940-41), pp. 3974, 4362.
Hoover's Special Ordinances (1915), pp. 1424, 1509, 1560, 1657.
Case: Barsaloux v. City of Chicago, 248 Ill. 598 (1910).
Other reference: Opinion No. 10469 of April 30, 1941.

OPINION OF FOREGOING SYNOPSIS

We have your letter of the 8th instant supplementing that of May 2, 1941, transmitting a request from the central district engineers of the water pipe extension division for an order relative to the relocation of a water main and service pipes in Couch place between North State and North Dearborn streets and short distances beyond, together with a blue print bearing order No. 82221, which shows the estimated cost of the work to be $900.00.

We learn from your letters and from additional information obtained in our several conferences with you that the doing of this work has become necessary by reason of the construction of a subway mezzanine station in Couch place, which station will take up all the space now occupied by this main and pipes, necessitating the relocation of the same. According to information from your engineer given us in conference the existing main and pipes are in good condition and would last indefinitely if their removal were not made necessary by the subway construction.

You request our opinion as to the propriety of charging the cost of this work to Traction Fund Account 395-S-10.

As the contractor undertook to reimburse the city for the relocation of such city-owned structures only as were located entirely outside of the excavation and as the work contemplated by you does not fall within that description, the contractor would not be liable for the cost of the same.

The appropriation for said account No. 395-S-10 in the appropriation bill for 1941 was as follows (C. J., p. 3974):

> "For the cost and expense of supporting, protecting, maintaining, removing, replacing, relocating, rearranging, adjusting, repairing, altering, restoring, or reconstructing city-owned water-mains, connections and appurtenances, incident to the construction of city-owned Initial System of Subways for local transportation purposes: To be expended
> 395-S-10 upon direction of the City Council ..... $700,000.00."

The necessary direction for the expenditure of the money thus appropriated was subsequently given by the city council on March 5, 1941 (C. J., p. 4362).

By our opinion rendered April 30, 1941, we advised you that the traction fund was created by contract ordinances passed by the city council in 1907 and 1908 and accepted by the street railway companies, grantees, and may be used for the purchase and construction of street railways by the city (Special Ordinances, Hoover, 1915, pp. 1424, 1509, 1560, 1657), for defraying the cost of constructing or acquiring subways and the property necessary or appropriate for the operation thereof (Ill. Rev. Stat. 1939, chap. 24, pars. 569c, 569d, Subway Act), and for the cost of work which is a necessary incident to the purchase or construction of street railways or subways (*Barsaloux* v. *City of Chicago,* 248 Ill. 598 (1910).)"

In view of the fact that the mezzanine station, which the city is constructing in Couch place, will occupy all of the space where the main and service pipes are located, wherefore it will be necessary to remove and relocate them, we are of the opinion that the relocation of such pipes and mains is a necessary incident to the construction of the subway, and that the reasonable cost of the work in question may properly be charged against Traction Fund Account 395-S-10.

Opinion No. 10523, dated August 28, 1941, to the Commissioner of Streets and Electricity and Opinion No. 10527, dated August 29, 1941, to the Commissioner of Public Works hold substantially the same as the above opinion.

USE OF TRACTION FUND FOR PROTECTIVE MAINTENANCE OF WATER SYSTEM

(No. 10534—Commissioner of Public Works—A. J. R.—September 18, 1941.)

Since "protective maintenance" of city's water service is, as a matter of sound engineering, necessary work because of the construction of the subway, the reasonable cost of such work may properly be defrayed from the traction fund.

Citations:
Statute: IRS '39, 24: 569c, 569d.
Ordinance: Hoover's Special Ordinances (1915), pp. 1424, 1509, 1560, 1657.
Case: Barsaloux v. City of Chicago, 248 Ill. 598 (1910).
Other reference: Opinion No. 10259 of April 30, 1940.
Opinion No. 10469 of April 30, 1941.

WAIVER OF ATTORNEY'S LIEN

(No. 10580—City Comptroller—J. H. S.—December 30, 1941.)

Waiver of attorney's lien is not required where no notice of lien has been filed.

CREDIT FOR MATERIAL FURNISHED BY THE CHICAGO RELIEF ADMINISTRATION

(No. 10602—Deputy Comptroller—P. J. L.—February 14, 1942.)

The Chicago Relief Administration is entitled to credit for waste material furnished to the House of Correction and sold by it.

Citation: Mun. Code: 7-3, 24-12.

USE OF SPECIAL DEPOSIT FOR SEWER WORK

(No. 10610—Commissioner of Public Works—J. F. G.—February 26, 1942.)

Special deposits required in connection with private work involving public sewers and drains cannot be drawn against for purchase of necessary materials or for payrolls.

Citations: People v. Sergel, 269 Ill. 619 (1915).
Midland Lumber Co. v. Dallas City, 276 Ill. 172 (1916).

OPINION OF FOREGOING SYNOPSIS

Reference is made to a communication from the bureau of sewers in which it is said that this bureau is called upon from time to time to do certain work pertaining to the public sewers and drains and to inspect certain other work by private persons and corporations affecting the public sewers and drains. This work and inspection service is required because of improvements and activities of private persons and corporations and public utilities affecting the location, support and maintenance of the public sewers and sewer connections. In such cases the bureau of sewers requires a special deposit from the persons and corporations benefited to cover the cost of all work and the inspection service. Our opinion has been requested whether the superintendent of sewers can draw against these special deposits for the payrolls of his employees and for materials directly employed and used in the performance of such work and inspection service.

The general rule is that no expense may be incurred by any officer of the city unless the object or purpose of the expenditure has been included in the annual appropriation bill. This rule applies to the expenditure of any money from funds which come into the possession of the city whether from taxes or from miscellaneous revenues. (*People* v. *Sergel,* 269 Ill. 619 (1915),) or in payment of damages to city property (*Midland Lumber Co.* v. *Dallas City,* 276 Ill. 172 (1916).)

The character of the work outlined in the communication from the bureau of sewers is such as is necessary to protect the proper functioning of the public sewer system of the city. Otherwise it would be improper for the city to engage in the work for compensation as though the city were conducting a private contracting business. The special deposits made to cover the work and inspection are in the nature of an advance payment for consequential damages which in due course will accrue to the city as a result of the improvements made by the private persons and corporations or by their activities affecting the public sewer system. Hence, when the cost of the work and inspection is finally ascertained and charged against these special deposits, the amount so ascertained must be paid into the city treasury as a part of the general fund of the city subject to expenditure only pursuant to an appropriation in accordance with the law.

We are therefore of the opinion that the special deposits may not be used directly for the payment of salaries of employees or for the purchase of materials employed and used for the special work.

USE OF MOTOR FUEL TAX FUNDS FOR STREET LIGHTING, WATER PIPE AND SEWER INSTALLATIONS

(No. 10656—Commissioner of Public Works—R. J. N.—June 25, 1942.)

Motor fuel tax funds may be charged with the cost of installation of street lighting, water pipe service and sewer laterals in connection with a street widening and improvement project where the city entered into an agreement with property owners for the installation of these items in lieu of a cash payment for damages.

PAYMENT OF INTEREST ON DEPOSITS

(No. 10699—City Comptroller—J. F. G.—November 2, 1942.)

The state law requires that advertisement and bids for payment of interest on deposits of city funds must provide for interest on demand deposits and on average daily balances, even though federal law precludes national banks from paying interest on demand deposits.

SCOPE OF "INDUSTRIES COMMUNICATIONS FUND (OCD)"

(No. 10700—Utilities Chief, Office of Civilian Defense, Chicago Metropolitan Area—J. F. G.—November 2, 1942.)

The ordinance authorizing the establishment of a fund known as "Industries Communications Fund (OCD)" which is to be received, held and disbursed separate from and independent of any city funds, is sufficiently broad to permit a subdivision of accounts for different communications systems such as a public utilities division, industries division, etc. No division of funds between such divisions is required.

Citation:
Ordinance: Coun. J. 7-8-42, p. 7209.

THRILL SHOW PROCEEDS AS DONATION TO SERVICE MEN'S CENTER

(No. 10702—Commissioner of Police, Fire Commissioner, Chief of Police, Chicago Park District—M. H. F.—November 12, 1942.)

Surplus funds accumulated from the sale of admission tickets to the 1941 and previous thrill shows given by members of the police and fire departments, and held by a voluntary committee called "The Chicago Police and Fire Thrill Show Committee" which has no corporate organization and without any adopted rules or by-laws, may be turned over to the Chicago Service Men's Center as a donation.

C. JUDGMENTS AND CLAIMS

PAYMENT OF JUDGMENTS

(No. 10262—City Comptroller—J. J. M.—May 1, 1940.)

All judgments payable from the judgment tax fund must be paid in order of entry.

Citation: IRS '39, 24: 697a.

PAYMENT OF PUBLIC BENEFIT JUDGMENT

(No. 10278—City Comptroller—W. V. S.—May 25, 1940.)

The date of a public benefit judgment which determines whether it may be paid from the judgment tax fund is the date of confirmation of the special assessment and thus a judgment confirmed on November 17, 1932 may be paid out of the judgment tax fund notwithstanding the judgment provided for payment of the assessment in five installments.

Citations:
Statute: IRS '39, 24: 697a.
Case: People v. Crane, 372 Ill. 228 (1939).

LIABILITY FOR BLASTING DAMAGE

(No. 10301—Commissioner of Public Works—D. L. L.—June 28, 1940.)

The city is not liable for damage to private property caused by blasting in connection with a public improvement, if the work is done with due care and skill.

Citations:
Cases: Kugel v. City of Sterling, 164 Ill. App. 371 (1911).
City of Joliet v. Seward, 86 Ill. 402 (1877).
Other references: 18 Op. Corp. Coun. 939 (No. 7795).
19 Op. Corp. Coun. 518 (No. 8995).
McQuillin, Municipal Corporations (2nd Ed.), v. 5, sec. 2115.

LIABILITY FOR ACCIDENTS ON PLAY LOTS

(No. 10327—Chicago Recreation Commission—L. L. K.—August 9, 1940.)

In the absence of negligence, the owner of a lot who permits its use for recreation purposes, or a voluntary body of community residents operating a play lot, will not be liable for accidents thereon. If negligence were shown, they would be liable.

The city or its aldermen may operate play lots on premises owned or leased with the same immunity from liability for accidents thereon, as in other governmental functions. The recreation commission, however, has no power to furnish liability insurance for voluntary local committees.

A corporation organized not for profit, for the purpose of operating play lots throughout the city, is permissible under the law. Such

corporation would be a charitable corporation and therefore exempt from liability for the negligence of its agents.

Citations:

Statute:	**IRS '39, 24: 183.**
Ordinances:	**Coun. J. (1932-33), pp. 3169-70.**
	Mun. Code: 37-10.
Cases:	**Gebhardt v. Village of LaGrange Park, 354 Ill. 234 (1933).**
	People v. YMCA, 365 Ill. 118 (1937).
	Parks v. Northwestern University, 218 Ill. 381 (1905).
	Maretick v. So. Chicago Community Hospital, 297 Ill. App. 488 (1938).

OPINION OF FOREGOING SYNOPSIS

Receipt is acknowledged of your letter of recent date requesting an opinion concerning seven specific questions asked therein relating to liability incidental to the operation of play lots in the city of Chicago. The following questions have been asked:

"1. To what extent is an owner of a lot who permits its use for recreation purposes liable for injuries received on it by participants or public, with or without negligence as a contributing factor?

"2. To what extent is a local recreation committee, serving as a voluntary body of community residents, which has caused a play lot to be established and equipment set up, liable for injuries by accident with or without negligence involved?

"3. Are we correctly informed that privately owned play lots may be operated by the City of Chicago on lease from the owner without liability for accident with or without negligence as a contributing factor because of immunity enjoyed by the City in carrying out its governmental functions?

"4. If this is correct, what steps should the Recreation Commission take to protect the local recreation committees against liability?

"5. Can an alderman obtain a lease from a lot owner and set up a play lot and be protected against liability as carrying out a governmental function of the city?

"6. Can a local recreation committee obtain immunity from liability by forming a charitable corporation?

"7. Could one charitable corporation be formed which would take over this function for the whole city, in whose names leases could be held and play lots operated?"

In considering these questions it is necessary to understand that the Chicago Area Recreation Commission was created by resolution of the city council of the city of Chicago, December 16, 1932, Council Journal, December 16, 1932, pages 3169-70. The city of Chicago enacted this resolution by virtue of authority contained in chapter 24, article XII, paragraph 183, Illinois Revised Statutes 1939, State Bar Association Edition, which provides as follows:

"The city of Chicago may acquire, by purchase or otherwise, municipal parks, playgrounds, public beaches and bathing places, and improve, equip, maintain and regulate the same."

The resolution referred to provides:

"The functions of the commission shall be:

"1. To make a survey of public, privately supported and commercial recreational facilities;

"2. To make recommendations on a comprehensive recreation plan for Chicago and the Chicago area;

"3. To act in an advisory capacity to the city council, the mayor, and the various administrative officials, concerned in the co-ordination and the development of recreational facilities, use of leisure time, and a comprehensive program for the entire community.

"This commission shall incur no expenses which will in any way obligate the city of Chicago."

Appropriations to carry on the work of the commission are made annually by the city council.

In answer to question 1 it is our opinion that the owner of a lot who permits its use for recreation purposes would not be liable for injuries sustained on the lot in the absence of negligence on his part. The owner owes a duty to the public who use his premises with his permission to exercise reasonable care to make the premises safe and to warn them of latent defects or dangers of which he has knowledge. A breach of this duty would constitute negligence for which he could be held liable. The mere permissive use, however, would not, in the absence of such negligence, subject him to liability for injuries received on his premises by participants or the public.

In answer to question 2 it is our opinion that a local recreation committee serving as a voluntary body of community residents which was operating a play lot would be liable for injuries from accidents resulting from their negligence. In the absence of negligence there would be no liability.

In answer to question 3 it is our opinion that the city, in providing recreational facilities on premises owned or leased, is engaged in a governmental function and is not liable for injuries sustained by persons on the premises or using the recreation facilities, even though the injuries were caused by the negligence of the city or its agents. *Gebhardt* v. *Village of LaGrange Park,* 354 Ill. 234 (1933). The members of the Chicago Area Recreation Commission and its employees and agents are agents of the city of Chicago in the performance of this governmental function and would share in this immunity.

In answer to question 4 it is our opinion that the recreation commission, being prohibited by the resolution creating it from incurring any expense obligating the city of Chicago, has no power or authority to provide public liability insurance for local voluntary committees. The only way of protecting the local recreation committee from liability would be by the organization of the committee into a corporation not for profit to operate or manage the play lots as suggested by your question 6 which is hereafter answered.

In answer to question 5, section 37-10 of the Municipal Code of Chicago provides as follows:

"Each alderman for and in the ward which he represents may, without charge to the city, provide such playgrounds, parks, breathing spaces and open-air places of amusement as he in his own judgment shall deem fit, and may fence them in, and provide all paraphernalia necessary. Such playgrounds, parks, breathing spaces and open-air places of amusement shall be under the sole care and control of the alderman providing the same; provided, that all ordinances of the city applicable to such places shall be enforced therein. No entrance or admission fee shall be charged to such places so provided.

"During the winter months the alderman providing such playground or place of amusement may use water from the city hydrants without charge to flood them for skating.

"The commissioner of streets and electricity is hereby authorized and directed to conduct electric light wires to such playground, park, breathing space or place of amusement, and to erect and equip a sufficient number of lamps to light such grounds, and to supply enough electric current to keep such lights burning from sundown to eleven o'clock at night, or during such time as the alderman in charge thereof shall determine."

By virtue of this ordinance it is our opinion that a play lot is a public playground operated by the city under the supervision of the alderman. The alderman, as an officer and agent of the city in the performance of a governmental function, would be immune from liability for acts performed in connection with this function.

In answer to question 6, we have been able to find no reported decision in which a corporation not for profit was organized to operate a playground. It is our opinion, however, from decisions of our courts that such a corporation could be formed. Charity has been defined by our Supreme Court in *People* v. *Y. M. C. A.*, 365 Ill. 118 (1937), at page 122, in the following language:

"* * * 'Charity,' in law, is not confined to the relief of poverty or distress or to mere alms giving but embraces the improvement and promotion of the happiness of man. A charity is a gift to the general public use which extends to the rich as well as to the poor. The principal and distinctive features of a charitable organization are that it has no capital stock and no provision for making dividends or profits for private gain. It derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter. The charitable nature of an organization depends upon whether its object is to carry out a purpose recognized in law as charitable, or whether it is maintained for gain, profit or private advantage. * * *"

Under this language we believe that a corporation organized not for profit, for the purpose of operating and equipping a play lot, would be held to be a charitable corporation. Under the well established law in this state a charitable corporation is exempt from liability for the negligence of its agents or servants. *Parks* v. *Northwestern University*, 218 Ill. 381 (1905); *Meretick* v. *So. Chicago Community Hospital*, 297 Ill. App. 488 (1938).

Answering question 7 and applying what we have already said in answer to question 6, it is our opinion that a charitable corporation could be formed for the purpose of operating play lots throughout the city.

GASTROSCOPIC EXAMINATION OF ALCOHOLIC PRISONERS

(No. 10343—Commissioner of Police—E. J. B.—September 9, 1940.)

Gastroscopic examinations of alcoholics, confined at the Bridewell and at police stations, may be made by university doctors, provided the prisoners agree thereto in writing and sign waivers releasing the arresting officers and the city of all liability as a result of the arrest, and that no undue delay results therefrom.

LIABILITY FOR DAMAGE TO SUBMARINE CABLE

(No. 10346—Commissioner of Public Works—A. F. G.—September 23, 1940.)

No liability attaches to the owner of a vessel for damage caused by such vessel to a city submarine cable whose location was not publicly known or charted on the navigation maps.

The right of the city to lay cables on the bottom of the lake, is subordinate to the paramount right to navigate the lake.

Citations:
Cases: Thom v. City of South Amboy NJ, 236 Fed. 289 (1916).
United States v. Henry Steers, Inc., 8 Fed. Supp. 363 (1934).
Western Union, etc. Co. v. Inman, etc., 59 Fed. 365 (1894).
John L. Blanchard, et al. v. Western Union Tel. Co., 60 NY 510 (1875).
Omslaer v. Philadelphia Co., 31 Fed. 354 (1887).
The Georgie, 14 Fed. (2nd) 98 (1926).
Other reference: 45 CJ 445.

CITY LIABILITY FOR INJURIES ON STATE HIGHWAY SYSTEM STREETS

(No. 10407—Commissioner of Public Works—L. L. K.—January 18, 1941.)

The city is not liable for injuries on streets which are a part of the state highway system, except where it has contracted with the state to maintain any such street. Whether sidewalks are included in the reference to a "street," and whether the city is responsible for the construction, maintenance and operation of sidewalks located in such "streets," depends upon whether the proceedings in which a street is made a part of the state highway system designate the taking over of the "roadway only," or "from lot line to lot line." Only in the latter case would the sidewalk also become part of the state highway system and the state would thereafter be responsible for the construction, maintenance and operation of such sidewalk.

Citation: Koppert v. City of Chicago, 307 Ill. App. 541 (1940).

LIABILITY FOR INJURIES TO EMPLOYEES OF MUNICIPAL TUBERCULOSIS SANITARIUM

(No. 10431—President, Municipal Tuberculosis Sanitarium—L. L. K. —March 5, 1941.)

Officers or members of the board of directors of the Municipal Tuberculosis Sanitarium would be liable personally if their negligence caused employees to sustain any injuries of disease, but when acting

as officials of the Sanitarium, their acts are the acts of the institution and would impose no personal liability upon them.

Liability is incurred, however, under the Workmen's Compensation act and the Workmen's Occupational Diseases act for accidental injury and disease sustained by WPA workers who are in fact employees of, and wholly subject to the control of, the Municipal Tuberculosis Sanitarium.

Citations:
Statutes: USCA, title 5, chap. 15, sec. 751.
IRS '39, 48: 142, 172.5.
Cases: Allen-Garcia Co. v. Industrial Commission, 334 Ill. 390 (1929).
Forest Preserve District of Cook County v. Industrial Commission, 357 Ill. 389 (1934).
Dahn v. Davis, 258 U. S. 421, 66 L. Ed. 696 (1922).

PAYMENT OF CLAIM FOR EXAMINATION OF TITLES

(No. 10445—Chairman, Committee on Finance—C. J. A. & W. H. S.—March 24, 1941.)

Claims of a title and trust company for compensation for examination of titles ordered by the board of local improvements under the subway ordinance of 1930, represent an indebtedness lawfully incurred by the city and chargeable to the traction fund. Since the statute of limitations has now run against the claim, the company cannot compel the city to pay the same. The indebtedness still remains, however, as a moral obligation, and the city council may waive the defense of the statute of limitations by passage of an appropriate order.

Citations:
Statute: Subway act (1929), sec. 4.
Cases: Barsaloux v. City of Chicago, 245 Ill. 598 (1910).
Keener v. Crull, 19 Ill. 189 (1857).
Campbell v. Holt, 115 US 620, (1885).
Salmon, 249 Fed. 300 (1917).
Butler v. Fechner, 200 SW 1126 (1918).
Cuykendall v. Doe, 129 Iowa 453 (1906).
Walrod v. Manson, 23 Wis. 393 (1868).
Kahn v. Lesser, 97 Wis. 217 (1897).
Lyman v. Kaul, 275 Ill. 11 (1916).
Finn v. United States, 123 US 227 (1887).
United States v. Cumming, 130 US 452 (1889).
Hewel v. Hogin, 3 Cal. App. 248 (1906).
Bates v. Gregory, 89 Cal. 387 (1891).
Other references: 37 CJ 684, 721.
Coun. J. (1939-40), p. 3670.

SETOFF OF CITY'S DEBT

(No. 10515—J. F. G.—July 30, 1941.)

A private person may not set off a city's debt against the amount to be paid as compensation for vacation of part of a street as each payment from city funds must be evidenced by a warrant upon the city treasurer signed by the mayor and countersigned by the comptroller and is charged to a specific appropriation for which payment is authorized.

SUB-CONTRACTOR'S LIEN AGAINST CITY

(No. 10592—Commissioner of Public Works—E. J. K.—February 13, 1942.)

Section 5 of the Mechanics' Lien Act which requires sworn statements from contractors, does not apply to property owned by the city.

Section 23 of the Act which provides for a lien in favor of a subcontractor against public funds due the contractor does apply to the city.

WAIVER OF DECEASED ATTORNEY'S LIEN

(No. 10705—City Comptroller—F. V. M.—November 16, 1942.)

An attorney's lien in favor of a partnership may be released, in the event of death of one of the partners, only upon order of the Probate Court in the matter of the estate of the deceased partner.

PROPERTY LOST AT BATHING BEACH

(No. 10709—Committee on Finance—C. N.—November 19, 1942.)

The maintenance of municipal bathing beaches by the city in the advancement of public welfare is a governmental and not a proprietary function and, in the absence of a statute imposing such liability, a municipality is not liable for negligence of officers or servants in the discharge of their duties, is under no obligation to provide lockers, and is not an insurer of property left in lockers.

Citations:
Case: Gebhardt v. Village of LaGrange Park, 354 Ill. 234 (1933).
Other reference: 9 Op. Corp. Coun., p. 317.

CHAPTER XII

CITY PROPERTY

A. REAL ESTATE

MORTGAGE OF AIRPLANE HANGAR LEASE

(No. 10194—City Comptroller—J. F. G.—February 5, 1940.)

The city's determination of persons in possession under lease for airplane hangar lots will be affected by consenting to a mortgage of the leasehold interest.

The city comptroller has no power to change the term of an airplane hangar lease without authorization from the city council by ordinance.

Citation: Airport Lease Ordinance of May 13. 1931 (Coun. J. p. 238).

LEASE OF DOCK FACILITIES ON NAVY PIER

(No. 10196—City Comptroller—C. M. W.—February 6, 1940.)

The city comptroller is authorized to make leases of Navy Pier realty for a term not exceeding two years but does not have the power to lease harbor and dock facilities without specific authorization therefor from the city council.

Citations:
Statutes: IRS '39, 24: 512, 598-621.
Ordinance: Mun. Code: 7-50.
Case: Stott v. Thompson, 294 Ill. App. 450, 464 (1938).

LEASE FOR AIRPLANE HANGAR SPACE

(No. 10216—City Comptroller—J. F. G.—March 12, 1940.)

The city comptroller has the authority under present ordinances to execute a twenty-year lease for hangar space subject to approval by the commissioner of public works and the corporation counsel, without any further city council action.

No addition or alteration in said lease may be made without express authorization by the city council.

Citations:
Statute: IRS '39, 24: 513.
Ordinance: Airport lease ordinance, Coun. J. (1931-32) p. 238, secs. 2, 3.

PURCHASE OF PART OF A TRACT

(No. 10234—C. B. C.—April 2, 1940.)

Under council authorization to purchase a large tract of land for not in excess of a definite amount, the comptroller is authorized to negotiate for and purchase this property as a tract only, and neither he nor any other city employee is authorized to contract for the purchase of any individual lot or lots in said tract, except insofar as the individual lot constitutes a part of the said entire tract.

Citations:
Cases: May v. City of Chicago, 222 Ill. 595 (1906).
Snyder v. City of Mt. Pulaski, 176 Ill. 397 (1898).
City of Danville v. Danville Water Co., 178 Ill. 299 (1899).
Alexander W. Hope v. City of Alton, 214 Ill. 102 (1905).

MODIFICATION OF LEASE

(No. 10297—Chairman, Committee on Finance—M. H. F.—June 25, 1940.)

To modify the terms of a lease of city property to eliminate or postpone a six months cancellation clause would require an amending ordinance passed by the city council.

Citation: Coun. J. (1935-36), p. 1409.

MEDIUM OF PAYMENT FOR CITY PROPERTY

(No. 10323—W. V. S.—August 2, 1940.)

A purchaser, by competitive bidding, of city real estate, cannot set off judgments held against the city, in payment or part payment thereof, but must pay in cash.

Citations:
Statute: IRS '39, 24: 513.
Ordinance: Coun. J. (1940), pp. 2176, 2823.

POWER TO RESTRICT PRIVILEGE AT AIRPORT

(No. 10341—Acting Chief, Regulation and Enforcement Division, Department of Commerce—J. F. G.—August 28, 1940.)

The grant of the exclusive right to conduct a business of carrying sightseeing passengers off the municipal airport is not in conflict with the Civil Aeronautics act of 1938.

Citations: Civil Aeronautics act, secs. 2, 303 (1938).
IRS '39, 24: 65.99½.

OCCUPATION OF LEASED PREMISES BY PARENT CORPORATION OF LESSEE

(No. 10381—City Comptroller—J. F. G.—December 6, 1940.)

When a lease on airport land has a restriction against assignment or subletting without the written consent of the city, the lessee is in technical violation of the lease by permitting the parent company of the lessee to occupy the premises. The subsidiary and parent corporations, while affiliated, are not identical. The lease should be assigned to the parent company, with the consent of the council, and the assignee should assume all of the obligations of the lessee, in order to give the city the security against loss intended to be covered by the lease.

Citation: Lease Form No. 1, adopted by City Council, May 13, 1931.

DEMONSTRATION OF BEER-COOLING EQUIPMENT IN CITY BUILDING

(No. 10440—City Comptroller—C. M. W.—March 19, 1941.)

A building which belongs to the city, even though under lease to an individual, may neither be used nor sublet for purposes of selling or dispensing alcoholic liquors on the premises, nor for the exhibition or demonstration of beer-cooling equipment and fixtures.

ASSIGNMENT OF HANGAR SPACE BY LESSEE

(No. 10526—City Comptroller—J. F. G.—August 28, 1941.)

A document by an airport lessee granting an airline company the right to occupy certain airport premises for a hangar from year to year subject to termination by either party at the end of any year does not assign all the rights of the lessee under the original airport lease but only the right to use the designated hangar space.

Citations:
Cases: Dumper's case, 4 Co. Rep. 119 b (1578).
Kew v. Trainor, 150 Ill. 150 (1894).
Springer v. Chicago Real Estate Loan Co., 202 Ill. 17 (1903).
Hartford Deposit Co. v. Rosenthal, 192 Ill. App. 211 (1913).
Reconstruction Finance Corp. v. Kentucky River C. Corp., 114 F. (2d) 942 (1940).
McCarthy v. Handley, 222 Ill. App. 604 (1921).
Other reference: 32 Am. Jur., Landlord and Tenant, sec. 342, p. 304; sec. 411, p. 338.

OPINION OF FOREGOING SYNOPSIS

Reference is made to your letter of August 19, 1941 transmitting correspondence between your office and The Texas Company relating to the above subject.

It appears that on March 14, 1941 The Texas Company submitted to you a copy of a so-called license agreement dated June 1, 1939 whereby The Texas Company licensed and permitted the Eastern Air Lines, Inc., "to enter upon, use and occupy for the purposes and on the conditions set forth" hanger space No. 48 reserving to the licensor "the privilege of selecting whatever space necessary for use as an office and for use of storage facilities of one (1) airplane in hangar covered by this license."

On May 9, 1941 you addressed The Texas Company in reply to its letter of March 14, 1941 stating that you were surprised to learn that this "sublease" was made without first obtaining the consent of the city and returning the copy of the document without your approval.

On August 1, 1941 The Texas Company advised you that the license agreement is not a lease nor an assignment of a lease in violation of clause (6) of the original lease and furthermore that the city has waived the breach, if any, by acceptance of rent on January 1, 1941 with knowledge of the fact that Eastern Air Lines, Inc., was in possession.

The original lease referred to is Airport Lease Form No. 1 dated September 1, 1931 and leases to Thompson Aeronautical Corporation of Ohio hangar space No. 48 for the term beginning September 1, 1931 and ending December 31, 1950. The expressed purpose of that lease was "to be used for hangar and aviation purposes only and for no other purpose whatsoever." It contains the following provision:

> "(6) Not to assign this lease or sublet said premises, or any part thereof, without the written consent of the Lessor."

It also contains the following provision:

> "(22) Each of the provisions of this lease shall extend to, and shall, as the case may require, bind or inure to the benefit not only of the Lessor and of the Lessee, but also of their respective heirs, legal representatives, successors and assigns."

On January 31, 1933 Thompson Aeronautical Corporation executed an assignment of this lease to American Airways, Inc., a Delaware corporation, and thereafter on October 25, 1933 the city by its comptroller and city clerk, consented to the assignment "in consideration of the undertaking by AMERICAN AIRWAYS, INC. to assume the duties and obligations of the within instrument heretofore undertaken by the original Lessee."

On May 20, 1935 American Airways, Inc., assigned this lease to The Texas Company and on October 9, 1935 the city council passed an ordinance authorizing the city comptroller to consent to the assignment and to a modification of the lease to permit the lessee to store, sell, and/or dispense its petroleum products for aviation purposes only from the demised premises "In consideration of the assumption by THE TEXAS COMPANY of the duties and obligations of the lessee in the lease above assigned, * * *." The consent to the assignment and modification of the lease was thereafter, on October 31, 1935, executed by the city comptroller in behalf of the city.

It is now claimed by The Texas Company that the various consents of the city to the assignment of the lease referred to without any restriction as to future assignments amount to a waiver altogether of clause six (6) in the original lease so that the lessee or its assignee may reassign

the lease without the consent of the lessor. There seems to be respectable authority for this contention (32 Am. Jur., Landlord and Tenant, Sec. 342, p. 304).

The rule is based upon *Dumpor's Case* (1578), 4 Coke 119, wherein the lease provided that the lessee or his assigns should not alien the premises to any person or persons without the special license of the lessors and afterwards the lessors by their deed licensed the lessee to alien or demise the land, or any part of it, to any person or persons. This rule has been questioned in Illinois in cases in which the consent was to the assignment of a lease to a particular person or persons and where the consent was given on condition that the assignee would perform all the covenants and conditions of the original lease and where the original lease provided that its provisions shall bind not only the lessee but his assigns. (*Kew* v. *Trainer* (1894), 150 Ill. 150, 157-8; *Springer* v. *Chicago Real Est. Loan Co.* (1903), 202 Ill. 17, 25-26; *Bartford Deposit Co.* v. *Rosenthal* (1915), 192 Ill. App. 211, 214.)

In *Reconstruction Finance Corp.* v. *Kentucky River C. Corp.* (1940), 114 F. 2d 242, the Circuit Court of Appeals for the Sixth Circuit said (page 945):

> "* * * The trend of recent cases, however, is to limit strictly or even repudiate the rule in *Dumpor's* Case. * * * It would be inequitable to apply it here, inasmuch as the original lease expressly provided that the leasehold could not be encumbered or assigned without the lessor's consent and also that all covenants and conditions were to be binding upon successors and assigns, and the supplemental lease provided that all provisions of the original lease not inconsistent therewith were to remain in full force and effect."

In the case last cited there was no restriction as to future assignments in the consent to the assignment. It was, however, provided in that consent that the assignment is subject to the terms and conditions of the original lease. The consent of the city to the assignments whereby The Texas Company acquired the leasehold estate was also made subject to the terms and conditions of the original lease.

However, The Texas Company claims that the document, a copy of which was submitted to you, is not an assignment of the term of the lease but a mere license given to the Eastern Air Lines, Inc. Whether the document be called a license or sublease is immaterial. It purports to grant to the Eastern Air Lines, Inc., the right to enter upon, use and occupy the premises from year to year subject to termination of the right by either party at the end of any year. This is certainly not an assignment of all of the rights of the lessee under the original lease dated September 1, 1931 to which The Texas Company is the successor in interest. The rule in *Dumpor's* Case was never extended to such license, underletting or subleasing (32 Am. Jur., Landlord and Tenant, Sec. 411, p. 338).

Whether or not The Texas Company was within its right as lessee to permit Eastern Air Lines, Inc., to store its aircraft in hangar No. 48, as in the case of *McCarthy* v. *Handley* (1921), 222 Ill. App. 604, and whether or not the city had such knowledge of the license or subletting at the time it accepted rent from The Texas Company on January 1, 1941 as to constitute a waiver of the breach of the provision against subletting is not material to a practical consideration of the respective rights of the city and the Eastern Air Lines, Inc. It is clear that the licensee did not acquire all of the rights of the lessee under the lease of September 1, 1931. It acquired the right only to use and occupy hangar space No. 48. If The Texas Company persists in its claims Eastern Air Lines, Inc., may be barred from the use of the terminal facilities at the airport unless by

accepting the new form of lease (40-7-3), adopted by the city council July 31, 1940 for all air lines, the lessee and its licensee manifest their willingness to assume the obligations incident to the use of the airport facilities.

USE OF CITY PROPERTY FOR LIBRARY PURPOSES

(No. 10590—City Comptroller—A. E. P.—January 26, 1942.)

Chicago Public Library is not a separate municipal corporation but is a corporate authority of the city. Authorization of the use of city property should be by council action and not by lease.

USE OF CITY PROPERTY FOR CARNIVAL SITE

(No. 10643—City Comptroller—C. P. H.—June 4, 1942.)

The authority of the comptroller to lease property belonging to the city includes authority to grant permission for its temporary use as a carnival site.

LEASING OF PROPERTY CONDEMNED FOR PUBLIC USE

(No. 10712—City Comptroller—B. O'H.—November 24, 1942.)

The city may make such use of real property condemned by it as does not show an intention to abandon it and is not inconsistent with the future use of the property for the purpose for which it was condemned. It has no legal right to retain buildings or land taken for public use for any purpose other than that for which it was taken, but it need not be immediately put to such use and it may, in the mean time, be rented temporarily.

Citations:

Statute: IRS '41, 24: 59-1.
Ordinance: Mun. Code: 7-50.
Cases: Bell v. Mattoon Waterworks, 245 Ill. 544 (1910).
C. & E. I. v. Clapp, 201 Ill. 418 (1903).
Other references: Lewis on Eminent Domain, Vol. 2, p. 1503.
6 Op. Corp. Coun., p. 617.
18 Op. Corp. Coun., p. 643 (No. 7934).

B. WATERWORKS

FURNISHING WATER WITHIN SANITARY DISTRICT

(No. 10423—Chairman, Committee on Finance—M. H. F.—February 20, 1941.)

The city is now obligated to furnish water to cities, incorporated towns and villages which are located within the Sanitary District of Chicago, but it is not obliged to furnish water to municipalities not within the Sanitary District or to industrial districts or industries located within the boundaries of the Sanitary District whether such industrial districts or industries may or may not be within the corporate limits of another municipality.

Citations:
Statutes: IRS '39, 24: 460.1 to 460.6.
IRS '39, 42: 348.
Cases: City of Chicago v. Town of Cicero, 210 Ill. 290 (1904).
Gage v. Village of Wilmette, 233 Ill. App. 123 (1924); aff'd 315 Ill. 328 (1925).
Other references: Op. Corp. Coun. (1914-15), p. 334.
18 Op. Corp. Coun. (1929-35), p. 29 (No. 7729).
20 Op. Corp. Coun. (1938-39), p. 276 (No. 9801).

CITY'S TITLE TO 39TH STREET PUMPING STATION PROPERTY

(No. 10470—Commissioner of Public Works—R. J. N.—May 9, 1941.)

The city holds title in fee simple absolute to the property upon which the 39th street pumping station is located and the words in the grant of property "for the purpose of enabling the city build and forever maintain thereon a pumping station" do not create a condition which would defeat the city's title if the condition is not performed. As complete owner the city has all the rights and privileges of land ownership, including the right to use the land for any purpose it desires, so long as such use does not constitute a public nuisance, or to dispose of the land to other municipal bodies or private individuals by sale or lease.

Citations:
Cases: Downen v. Rayburn, 214 Ill. 342 (1905).
Dunne v. Minsor, 312 Ill. 333 (1924).
Newton v. Village of Glen Ellyn, 374 Ill. 55 (1940).
Other reference: 6 Am. & Eng. Enc. of Law (2nd Ed.). pp. 501, 502.

SALE OF WATER TO NON-RESIDENT INDIVIDUALS

(No. 10493—Alderman, 41st Ward—A. C.—June 13, 1941.)

Although the city cannot be compelled to furnish water to individuals residing in Norwood Township, which is within the Sanitary District of Chicago and adjacent to the city, the city council may authorize such sale of water if it so desires.

Citations:
Statute: IRS '39, 24: 460.1 to 460.6.
IRS '39, 42: 348.
Other references: 20 Op. Corp. Coun. (1938-39), p. 276 (No. 9801).
15 Op. Corp. Coun. 628.

REFUND ON WATER MAIN FOR WHICH SEPARATE DEPOSIT CERTIFICATES ISSUED

(No. 10581—Commissioner of Public Works—A. F. G.—January 2, 1942.)

Installation of a continuous water supply pipe paid for by one person, for which separate certificates were issued, should be treated as a unit and warrants a refund of the deposit when the entire system combined produces sufficient revenue.

SALE OF WATER BEYOND CITY LIMITS

(No. 10664—Commissioner of Public Works—J. F. G.—July 14, 1942.)

The power of the city to construct, acquire and maintain water mains beyond the corporate limits may be exercised only for the purpose of securing water for the city and *not* for the purpose of supplying water to persons outside the city.

There is nothing in the statute or ordinances which compels the city to supply water outside the city limits excepting to cities, towns and villages within the Sanitary District. As to these it is provided that the price or charges shall be no greater than the city charges consumers within its limits for water furnished through meters in like quantities. As to water furnished private corporations outside its boundaries, charges may be set at any amount deemed reasonable according to the individual circumstances.

Citations:
Statute: IRS '41, 42: 348.

COMPUTATION OF REVENUE FROM EXTENSIONS OF WATER MAINS

(No. 10677—Board of Local Improvements—H. R. P.—August 18, 1942.)

Where a certain water main is not of itself earning the required amount of lineal foot revenue, but with other mains subsequently installed by reason of installation of the first main and as extensions to it, the total length brings in the required revenue, a refund covering money advanced for the installation of the first main should be allowed.

Citations:
Ordinance: Mun. Code: 185-20.
Other references: 18 Op. Corp. Coun., p. 807 (No. 6482); p. 808 (No. 8672).

Opinion No. 10725 to the Board of Local Improvements, dated August 18, 1942 holds to the same effect.

C. TAXATION OF CITY PROPERTY

TAXATION OF LEASEHOLD ESTATE

(No. 10401—City Comptroller—A. J. R.—January 13, 1941.)

The leasehold estate created by a lease upon city's property to a private corporation is taxable to the lessee as owner of that leasehold estate even though no provision of the lease imposes the obligation on the lessee to pay taxes on said estate. Any taxes which the lessee may be compelled to pay thereon cannot be recovered from the city by way of payment out of the city's funds or by way of abatement of rent, or otherwise.

Citations:
Case: Boston Molasses Co. v. Commonwealth, 79 NE (Mass.) 827 (1907).
Other reference: 35 CJ 1141.

APPLICABILITY OF FEDERAL EXCISE TAXES TO CITY PURCHASES

(No. 10542—Superintendent, Bureau of Central Purchasing—M. H. F. —October 15, 1941.)

As the city is a political subdivision of the state, any articles sold by manufacturers or retailers directly to it for the city's exclusive use are not subject to the new manufacturers' excise taxes or retailers' excise taxes imposed by the United States Revenue Act of 1941,

provided the exempt character of the sale is established as required by regulations of the Bureau of Internal Revenue.

Citations:
Statutes: U. S. Internal Revenue Code, secs. 2406, 3405, 3442, 3452.
U. S. Revenue Act of 1941, Title V, secs. 501, 521, 531 to 536, 541 to 550, 551, 552.
Other reference: U. S. Bureau of Internal Revenue Regulations (1940 Ed.), sec. 316.24.

FEDERAL TAX ON TRANSPORTATION BY CITY EMPLOYEES

(No. 10567—City Comptroller—M. H. F.—November 27, 1941.)

The city is exempt from payment of 1941 federal tax on transportation of persons but city officers and employees traveling for the city at city expense must use properly executed exemption certificates.

Citation: U. S. Revenue Act of 1941, sec. 3469.

FEDERAL EXCISE TAX ON RUBBER PRODUCTS FOR TRACK PADS IN SUBWAY

(No. 10681—Commissioner of Subways and Superhighways—B. O'H. —August 27, 1942.)

Subway equipment sold to the city is not subject to federal excise tax as falling within the exemption of "articles sold directly by the manufacturer to a political subdivision of a state for its exclusive use." This even though at some future date it is possible that the city may be reimbursed by the traction companies upon their acquiring the properties. In such event, liability for payment of the tax would have to be determined by the circumstances of the acquisition.

Citations: Sec. 316.24, p. 16 of Regulations 46, 1940 ed., U. S. Treasury Dept., Bureau of Internal Revenue.

LIABILITY FOR SALES TAX ON CONTRACT FOR SUBWAY SIGNS

(No. 10701—Commissioner of Subways & Superhighways—B. O'H.— November 9, 1942.)

The contractor for furnishing and delivering to the city for use in the subway certain illuminated directional signs fabricated according to specifications making them usable only for special uses, is not liable for payment of the Retailers' Occupation Tax.

Citations:
Cases: Material Service Corp. v. McKibbin, 380 Ill. 226 (1942).
Herlihy Mid-Continent Co. v. Nudelman, 367 Ill. 600 (1938).
Other reference: Rules and Regulations of the Dept. of Finance, 7-1-41, No. 17.

To the same effect is Opinion No. 10710 of 11-21-42 to the Commissioner of Subways and Superhighways.

RETAILERS' OCCUPATION TAX ON SUBWAY CONSTRUCTION MATERIALS

(No. 10720—Commissioner of Subways and Superhighways—B. O'H. —December 10, 1942.)

Tracks, cables, etc., purchased by the city in the construction of the subway are subject to Retailers' Occupation Tax whether they are turned over to the traction companies under the Unification Ordinance or used by the city in the operation of trains by itself or a lessee, based in the one case on the position of the city as contractor who used tangible property in the rendering of a construction service, and in the other case on the actual "use or consumption" within the meaning of the Act.

Where the contract price is based upon delivery f. o. b. Chicago, the tax must be computed on the gross amount, even though a part of the receipts are used by the sellers to cover freight charges.

Citations:
Statute: Retailers' Occupation Tax Act, 1941 amendment.

CHAPTER XIII
CONTRACTS

A. BIDS AND AWARDS

SALES TAX AS DETERMINING BID PRICE

(No. 10336—Commissioner of Public Works—J. F. G.—August 16, 1940.)

A certificate in contracts for the purchase of supplies would not be conclusive as to the bidders' liability to pay the retailers' occupation tax on such contract.

The responsibility of determining both questions of law and fact involved in the application of the retailers' occupation tax act to city contracts is upon the city authorities.

To equalize the bids on city contracts, one of which is not subject to the Illinois retailers' occupation tax, the commissioner of public works should add three per cent of such exempt bid to the amount of such bid and thereby determine the lowest bid according to such revised figures.

Citation: IRS '39, 24: 65.93.

BIDS BASED ON PREVAILING WAGE SCALE

(No. 10356—Commissioner of Public Works—J. F. G.—October 18, 1940.)

The state law requiring contractors on all public works projects to pay the prevailing wage scale in the community has been held unconstitutional by the Illinois Supreme Court. Pending a rehearing of this case, it is advisable when advertising for bids on city contracts, to require each bidder to submit bids in the alternative: (1) on the basis of the prevailing wage scale; and (2) on the basis of the freedom of the contractor to determine wages. If the bids do not vary between the alternatives the contracts may be awarded on the basis of the first alternative without subjecting the contracts to attack for invalidity.

Citations:

Cases: Adams v. Brenan, 177 Ill. 194 (1898).
Holden v. City of Alton, 179 Ill. 318 (1899).
Ritchie v. People, 155 Ill. 98 (1895).
Fiske v. People, 188 Ill. 206 (1900).
McChesney v. People, 200 Ill. 146 (1902).
Glover v. People, 201 Ill. 545 (1903).

DISPOSITION OF DEPOSIT AFTER WITHDRAWAL OF BID

(No. 10561—Commissioner of Streets and Electricity—R. N.—November 18, 1941.)

A bidder who withdraws his bid after the bids have been opened and the contract awarded to the bidder may not recover the deposit on his bid.

Citation: 18 Op. Corp. Coun., p. 826 (No. 8206).

WITHDRAWAL OF BID

(No. 10605—Commissioner of Subways and Superhighways—C. J. A. & W. H. S.—February 17, 1942.)

A bid may be withdrawn at any time prior to the scheduled closing time for receipt of bids.

B. EXECUTION AND INTERPRETATION

SIGNATURE ON INSTRUMENT OF CORPORATION

(No. 10235—City Comptroller—M. H. F.—April 2, 1940.)

An instrument of assignment, purporting to be the instrument of a corporation, when signed only by the corporation's secretary is not, on its face, valid without proof that the executing officer has power to sign. Proof of such authority should be attached to the instrument.

Citation:
Case: City of Chicago v. Stein, 252 Ill. 409 (1911).

INCREASES IN COAL PRICES

(No. 10330—Commissioner of Public Works—M. H. F.—August 12, 1940.)

It is proper to require all coal contractors receiving increases in the unit price of coal based on the minimum prices published by the bituminous coal division to agree that they will refund such increases in the event that the minimum price is held invalid by a court of last resort.

Citations:
Statute: Bituminous Coal act (1937).
Case: Sunshine Anthracite Coal Co. v. Adkins, 84 (L. ed.) 825 (1940).

LIABILITY FOR EXTRAS CAUSED BY DEFECTIVE SPECIFICATIONS

(No. 10345—Commissioner of Public Works—A. F. G.—September 16, 1940.)

Where a contractor is required to perform construction work in accordance with plans and specifications prepared by the department of public works, he does not warrant that the finished structure will be safe or suitable for the purpose intended.

Loss or extra expenses resulting from defects in the specifications would have to be borne by said department. Therefore the department of public works should bear the extra expenses necessitated to join a steel wall constructed by said department to a wall constructed for subway purposes when the specifications did not require the joining of said walls.

Citations:
Ordinance: Coun. J. (1938-39), p. 8098.
Other reference: Donnelly on Public Contracts, sec. 159.

LIABILITY FOR THEFT FROM CARLOAD SHIPMENT

(No. 10363—Acting Commissioner of Streets and Electricity—R. N.—November 6, 1940.)

A railroad is not liable for the theft of city supplies from a carload shipment, when the theft occurred after the car has been set on a private side-track, under perfect seals, in accordance with the specifications designating the side-track as the place of delivery. The delivery is consummated and the liability of the railroad ceases when the car is placed on said track, there being nothing more for railroad to do to complete its contract of carriage. The responsibility for such loss must fall on the city.

Citations:
Cases: Von Oven v. CB&Q RR. Co., 317 Ill. 334 (1925).
Weyl v. So. Pac. Co., 156 Ill. App. 493 (1910).
Gratiot Street Warehouse Co. v. St. Louis, Alton & Terre Haute RR. Co., 221 Ill. 418 (1906).
Other reference: 13 CJS, sec. 152.

UNANTICIPATED ADDITIONS TO CONTRACT

(No. 10386—Chairman, Committee on Finance—J. F. G.—December 12, 1940.)

Under a contract for a lump sum but containing unit prices, the city is liable for the cost of unanticipated items used in the erection of a structure without an order approving the same, when this

structure could not possibly be erected without incurring such expenses and these expenses were unforseen because the contract specifications were based on incorrect surveys made by the city.

Citation: Coun. J. (1939-40), p. 1118.

CHANGES IN CONTRACT PRICES OF COAL PURCHASED BY CITY

(No. 10388—Commissioner of Public Works—M. H. F.—December 13, 1940.)

Under contracts of the city for coal based upon specifications to the effect that, if the mine price established by the bituminous coal division of the Department of the Interior for coal delivered thereunder should be changed from the price upon which bids were based as indicated in the proposal sheet, then the price to be paid to the contractors would be changed correspondingly, the city is obligated to make changes in the contract prices, in accordance with the schedule of prices established by the coal division.

Citations:
Statute: Bituminous Coal act of 1937.
Case: Sunshine Anthracite Coal Company v. Adkins, 84 (L. ed.) 825 (1940).

PROTECTIVE MAINTENANCE UNDER SUBWAY CONSTRUCTION CONTRACTS

(No. 10410—Committee on Finance—A. J. R.—January 31, 1941.)

Under the terms of the subway contracts providing that the contractors shall protect and maintain all water or other pipes during construction of the subway and until completion thereof, the city is not entitled to receive from the contractor reimbursement for the cost of maintaining a crew with equipment in readiness to make any repairs, if necessary, since it was work which it was never required to do. The city is entitled, however, to reimbursement for water pipe repairs actually made.

Citations:
Ordinances: Mun. Code: 83-14, 185-55.
Case: Peerboom v. Minges, 207 NW (Iowa) 753 (1926).

Opinion No. 10474, dated May 13, 1941, to the commissioner of subways and superhighways, holds substantially the same as the above opinion.

POWER TO PURCHASE UNDER EXTENDED CONTRACT

(No. 10439—Deputy Comptroller—R. N.—March 18, 1941.)

Under a 90-day extension to a contract to purchase up to $8,000.00, the original contract expiring December 31, 1940, all purchases made under this extension must be charged to the 1941 appropriation. Therefore, no purchases made subsequent to December 31, 1940, may be charged to 1940 appropriations with or without council action; nor may any purchases in excess of $8,000.00 be made under the extension order without further council action.

Citation: Coun. J. (1939-40), p. 3584.

EXTENSION OF CONTRACT AFTER END OF FISCAL YEAR

(No. 10443—City Comptroller—J. F. G.—March 21, 1941.)

The commissioner of public works is prohibited from entering into a contract for supplies to be furnished after the end of the current fiscal year. However, if at the time a contract for a specific quantity of materials is made, there is a valid and unencumbered appropriation for the payment of the obligation, and the contractor is willing and able to perform his obligation in accordance with the terms of the contract but the city is not ready for the performance, the liability continues even though the appropriation lapses at the end of the year and whether or not the city council authorizes an extension of the contract. If the contract were for a continuing supply of materials required for one year, council authority would be necessary to continue the contract for the succeeding year.

Citations:
Statute: Cities and Villages act, art. VII, secs. 2a, 4.
Ordinance: Mun. Code: 26-18.

COMPENSATION FOR CITY'S DELAYS

(No. 10449—Commissioner of Subways & Superhighways—C. J. A., P. M. K. & W. H. S.—March 31, 1941.)

Under a subway contract, the city is obligated to pay compensation for delay caused by it only to the items which the commissioner of public works believes is necessary for the proper maintenance of the work and of the plant, materials and equipment of the contractor during the delay, which items might properly include any extra premiums on bond or insurance policies paid because of the delay and wages of any watchmen or caretakers engaged to watch the work or property of the contractor.

The contractor should not be allowed damages for the greater difficulty of working during the winter months than would have occurred if the work had been started in the summer but was delayed by the city, since the bad weather in the winter was not caused by the city and the contractor can claim damages for no other delays.

Citations:
Case: Underground Construction Company v. Sanitary District of Chicago, 367 Ill. 360 (1938).
Other reference: Subway Contract S-4A, sec. II, General Conditions, art. 14; General Specifications, sec. 18.

EXTRA COMPENSATION FOR CONTRACT ITEM

(No. 10456—C. J. A. & W. H. S.—April 15, 1941.)

A construction company which has entered into a subway contract with the city expressly requiring the placing of a temporary pavement, is not entitled to extra compensation for such work, notwithstanding the contractor stated it was doing the work at the city's cost. Even if it so desired, the city could not legally pay the contractor extra compensation for work which the contract required the contractor to perform without extra cost.

Citations:
Cases: Rienzi Co. v. Lincoln Park Commissioners, 198 Ill. App. 218 (1916).
Poncher v. Sterling Bolt Co., 254 Ill. App. 587 (1929).
City of Chicago v. Mohr, 216 Ill. 320 (1905).
State v. Board of Commissioners, 11 Neb. 484 (1881).
Beaver v. Trustees, 19 Ohio St. 97 (1869).
Boren v. Commissioners, 21 Ohio St. 311 (1871).
Other reference: Contract D-6B for Subway Construction General Conditions II, General Specifications, p. 45, sec. 22.

Opinion No. 10452 of April 9, 1941 to the commissioner of subways and superhighways holds substantially the same as the above opinion.

WORK PERFORMED AFTER TERMINATION OF CONTRACT

(No. 10475—Acting Commissioner of Streets and Electricity—A. J. R. —May 13, 1941.)

A contract between the city and a private contractor, which lapsed on December 31, 1940, but which contained provision for the extension of the contract by council action and which was in fact extended until April 30, 1941, legally expired on the latter date, regardless of the fact that the contractor did not receive notification of the termination of the extension until May 2, 1941. Therefore, services performed by the contractor after April 30, 1941, did not render the city liable to make payment therefor, notwithstanding the performance of

the work or the furnishing of materials may have been beneficial to the city.

Also, a bid for a contract which was opened February 24, 1941 and later rejected has created no contractual rights or obligations by virtue of the fact that the bid was not rejected until April 30, 1941, and the check not returned until May 6, 1941. The importance of the services involved is irrelevant to the question of contractual relationship between the city and a contractor.

Citations:

Ordinances: Mun. Code: 26-12, 26-20.
Coun. J. (1941), pp. 4423, 4509-4510.

Cases: Roemheld v. City of Chicago, 231 Ill. 467 (1907).
DeKam v. City of Streator, 316 Ill. 123 (1925).
May v. City of Chicago, 124 Ill. App. 527 (1906), affirmed 222 Ill. 595 (1906).
Tamm v. Lavalle, 92 Ill. 263 (1879).
Koons v. Richardson, 227 Ill. App. 477 (1923).
Folkers v. Butzer, 294 Ill. App. 1 (1938).
Hope v. City of Alton, 214 Ill. 102 (1905).

PAYMENT BY CONTRACTOR FOR OMITTED WORK

(No. 10476—Commissioner of Subways and Superhighways—A. J. R. —May 14, 1941.)

Where the subway contract provided that the contractors shall restore all pavements to a condition equal to that existing at the time their work was started, but the city does not desire to have the old pavements restored to their original condition because it contemplates widening and further improvements, the city may request the contractors to pay for this omitted work a sum which would be equal in amount to the cost of performing this work by the contractor, as nearly as this amount can be ascertained.

Citations:

Case: City Street Improvement Co. v. Kroh, 158 Cal. 308, 110 Pac. 933 (1910).

Other reference: Contract S-5 for Subway Construction (State and Dearborn Streets), General Specifications, secs. 21-22; art. 26, par. a, b, c, d and e; General Requirements, art. 7.

PAYMENT OF EXTRAS ON CONTRACT

(No. 10482—Commissioner of Public Works—J. F. G.—May 19, 1941.)

City council authorization is necessary to approve payment of extras on a contract when the total amount exceeds the original contract sum.

Citations:
Ordinances: Mun. Code: 26-31.
Coun. J. (1939-40), p. 2016.
Other references: 20 Op. Corp. Coun. (1938-39), p. 301 (No. 10141).

COMPLIANCE WITH CONTRACT TERMS

(No. 10498—Chairman, Subcommittee on Finance—M. H. F.—June 25, 1941.)

Under a term contract for an estimated quantity of materials to be delivered "by rail or by truck, as ordered" and providing that the city was not obligated to order or pay for any quantity other than that delivered and accepted under formal requisitions, the city was not obligated to order any shipments by rail.

The contractor is not entitled to an increase over the contract price because of increased market prices caused indirectly by the existence of the National Recovery Act or otherwise.

Citations:
Ordinances: Coun. J. (1933-34), p. 1253.
Coun. J. (1934-35), p. 3897.
Coun. J. (1935-36), p. 41.
Other reference: 18 Op. Corp. Coun. (1929-35), p. 842 (No. 8561).

SETTLEMENT FOR OMITTED CONTRACTUAL WORK

(No. 10503—Commissioner of Subways and Superhighways—A. J. R. —July 9, 1941.)

Whether the city may demand a cash payment as damages in lieu of performance of a provision in a subway contract regarding restoration of the street, is doubtful. The commissioner of public works may settle the matter of the omitted work by some other method and his decision will be final and binding on the contractor and the city.

Citations: State Street Subway Contract S-5: secs. 21 and 22 of General Specifications (p. 27), and art. 7 of General Requirements (p. 65).

LIABILITY FOR LOSS OF TUNNEL SERVICE

(No. 10504—Commissioner of Subways and Superhighways—W. H. S. —July 11, 1941.)

A contractor is not liable for the loss of freight tunnel service to a city building when the removal of such tunnel was necessary to the construction of the subway, though he may be liable for physical damage caused to the city building itself, as well as for damages to adjacent sidewalks and pavements.

Citation: Subway Contract S-3, p. 86.

DETERMINATION OF QUANTITY OF FILL

(No. 10511—Commissioner of Public Works—C. B. C.—July 24, 1941.)

When a contract designates a method of determining quantities of sand fill for which the contractor is to be paid, any other method would be improper as long as the circumstances are such that said quantities could be determined by this method. If, however, this is impossible, the city council should authorize representatives of the city to adopt a practical and equitable method of determining the amount of the fill.

RATIFICATION OF ADDITIONAL WORK

(No. 10514—Committee on Finance—D. H. N.—July 29, 1941.)

When additional work under a contract is of an emergency nature, it may be ratified by the city council after its performance even though such work increased the expense to an amount greater than the original contract amount.

CONTRACTS WHICH REQUIRE NO RESERVE, BOND OR MAYORAL SIGNATURE

(No. 10569—City Comptroller—C. J. A. & W. H. S.—December 2, 1941.)

Contracts for commodities do not come within the terms of the ordinances which require withholding of a reserve or furnishing of an indemnity bond.

Signature of the mayor, countersignature of the comptroller or signature of the corporation counsel are not required on contracts specifically authorized by the city council.

Citations:

Ordinances: Mun. Code: 19-1 to 19-8, 26-13, 26-28, 26-29.
Ordinance for the construction of an Initial System of Subways, passed 11-3-38, sec. 5.

Cases: Henning v. American Ins. Co., 108 Kan. 194 (1921).
Winsor v. Hunt, 29 Ariz. 504 (1926).
Smith v. Curran, 267 Mich. 413 (1934).
Eliot Natl. Bank v. Woonsocket, 31 R. I. 57 (1910).

WAIVER OF REQUIREMENT OF MAINTENANCE BOND

(No. 10576—Commissioner of Subways and Superhighways—P. M. K. & W. H. S.—December 17, 1941.)

Where the city accepts from a contractor a cash settlement in lieu of restoration of pavement, curbing, etc. called for by the contract, the contract provision for a maintenance bond covering such contemplated work is waived.

RESERVATION OF PAYMENT CLAUSE IN PRINTING CONTRACT

(No. 10622—City Comptroller—J. F. G.—March 20, 1942.)

Contracts for printing need include no reserve clause, and no reservation of payment is required thereunder.

EFFECT OF MARKETING RULES AND REGULATIONS ON COAL CONTRACTS

(No. 10634—Commissioner of Public Works—J. H. S.—April 27, 1942.)

The Marketing Rules and Regulations of the Bituminous Coal Division are paramount to the terms of any contract between the city and sellers of bituminous coal, and override any provision in such contract.

EFFECT OF MARKETING RULES AND REGULATIONS ON RESERVES WITHHELD UNDER COAL CONTRACTS

(No. 10640—City Comptroller—J. H. S.—May 19, 1942.)

The Marketing Rules and Regulations of the Bituminous Coal Division have no effect on the provision of the ordinance requiring the withholding of 15% reserve on coal contracts, but interest accrues on all such reserves withheld.

EFFECT OF MARKETING RULES AND REGULATIONS ON PRIOR CONTRACTS

(No. 10648—Commissioner of Public Works—J. H. S.—June 12, 1942.)

The Marketing Rules and Regulations of the Bituminous Coal Division do not operate retroactively and have no effect on deliveries made under contracts entered into prior to the revision of said rules.

DISTINCTION BETWEEN RETROACTIVE EFFECT OF MARKETING RULES AND REGULATIONS AND O.P.A. CEILING PRICES.

(No. 10682—J. H. S.—August 31, 1942.)

The Marketing Rules and Regulations of the Bituminous Coal Division cannot constitutionally affect existing contracts. As regulations of a regularly established and functioning administrative body exercising normal functions they are not retroactive, as distinguished from O.P.A. ceiling price regulations issued pursuant to war time emergency powers of the President.

INSURANCE OF COMPENSATION TO EMPLOYEES

(No. 10697—City Clerk—M. H. F.—October 20, 1942.)

Under the terms of a contract whereby the contractor is required to insure employees or their beneficiaries the compensation provided for in the Workmen's Compensation Act and the Occupational Diseases Act, a deposit of securities in escrow to guarantee payment of any judgment against the contractor under said Acts fulfills the requirement.

Citations:
Statutes: IRS '41, 41: 162, 163 (Workmen's Compensation Act).
IRS '41, 48: 172:26 (Occupational Diseases Act).

FEDERAL TAX ON FREIGHT RATES AS AFFECTING OBLIGATIONS UNDER EXISTING COAL CONTRACTS

(No. 10727—Commissioner of Public Works—M. H. F.—December 18, 1942.)

Under existing coal contracts by which the city agreed that the price per ton shall be changed correspondingly with changes in freight rates, the city is obligated to pay the increase in freight rates caused by the federal tax of 4 cents imposed on transportation by Section 3475 of the Internal Revenue Code.

Citations:
Statute: Int. Rev. Code: 3475.

CHAPTER XIV

PUBLIC IMPROVEMENTS

A. CONSTRUCTION

MODIFICATION IN CONGRESS STREET PLANS

(No. 10185—Commissioner of Subways and Superhighways—J. F. G. —January 27, 1940.)

The city has the authority to modify the original plan of the extension of Congress street so as to provide for separation of grades of Congress and Canal streets.

An easement in favor of the city may be utilized for any highway plans which the city may adopt in the interest of public safety, if such plans do not add to the obligations of the Chicago Union Station Company or the United States Government.

Neither the Chicago Union Station Company nor the United States has any proprietary right in a space reserved and granted to the city or a public highway, except the possibility of a reverter in the event of the abandonment of the project to extend Congress street.

Citations: **Coun. J. (1913-14) p. 4548.**
Coun. J. (1930-31) p. 4386.

USE OF SUB-SIDEWALK SPACE FOR SUBWAY STAIRS

(No. 10465—Commissioner of Subways & Superhighways—C. J. A. & W. H. S.—April 23, 1941.)

The commissioner of subways and superhighways may use whatever subsidewalk space is needed for the construction of the stairways leading to the subway. As to the balance of the subsidewalk space which is not so needed, the abutting property owner would be entitled to use the same if he would apply to the city for a permit for such purpose and give the required bond. If the abutting property owner is not using the space and has manifested no intention of doing so, the city may fill up the space with sand and lay the new sidewalk over this filled space.

Citations:
Ordinance: **Mun. Code: 34-36 to 34-38.**
Cases: **Barsaloux v. City of Chicago, 245 Ill. 298 (1910).**
Sears v. City of Chicago, 247 Ill. 204 (1910).

REMOVAL OF PORTIONS OF STAIRWAYS FROM SIDEWALK

(No. 10480—Commissioner of Subways & Superhighways—P. M. K. & W. H. S.—May 16, 1941.)

The commissioner of subways and superhighways may compel the removal of portions of stairways which encroach upon the sidewalk, when such stairways occupy space in the sidewalk which is necessary. convenient and desirable in order to accommodate subway users and pedestrians.

Citations:
Ordinance: Mun. Code: 19-8.
Case: People ex rel. Lapice v. Wolper et al., 350 Ill. 461 (1932).

RELOCATION OF WATER PIPES FOR SUBWAY

(No. 10490—Commissioner of Public Works—A. J. R. & W. H. S.—June 9, 1941.)

In the construction of a subway mezzanine station and passageway at such level which would cut through the present water pipes, the relocation of such water pipes becomes an incident to the construction of the subway and the cost thereof may properly be charged to the traction fund. Because of its location, this relocation is not included in any contract already let and must be done by the city without cost to the contractor.

Citations:
Ordinance: Coun. J. (1940-41), pp. 3974, 4362.
Case: Barsaloux v. City of Chicago, 245 Ill. 598 (1910).
Other reference: Subway Contract D-2D, General Conditions, art. 34, secs. (c) I, (c) II; Standard Specifications, sec. II.

Opinion No. 10491, dated June 9, 1941, to the commissioner of public works, holds substantially the same as the above opinion.

LIABILITY FOR OBSTRUCTION OF ENTRANCE

(No. 10494—Chairman, Committee on Finance—R. J. N.—June 14, 1941.)

The city is not liable for damages caused by a temporary obstruction of a business entrance on account of a public improvement.

Citations: Lefkowitz v. City of Chicago, 238 Ill. 23 (1909).
Osgood v. City of Chicago, 154 Ill. 194 (1894).
Chicago Flour Co. v. City of Chicago, 243 Ill. 268 (1910).
C. Hacker Co. v. City of Joliet, 196 Ill. App. 415 (1916).
Calumet Federal Savings & Loan Ass'n v. City of Chicago, 306 Ill. App. 524 (1940).

LIABILITY OF PRIVATE UTILITY OWNER

(No. 10514—Committee on Finance—D. H. N.—July 29, 1941.)

Inasmuch as it is the duty of owners of private utilities to maintain their private fire mains in good condition so that no damage to adjoining property may result from breakage, such owner is liable to the city for the expense of locating the broken main.

CONSTRUCTION OF ROAD ON CHANNEL OF CANAL

(No. 10531—Alderman, 5th Ward—J. F. G. & A. J. R.—September 9, 1941.)

In order to construct a vehicular highway on the channel of the Illinois and Michigan Canal and to fill the channel for that purpose, either the consent of the United States Congress would have to be secured or the 1919 Act would have to be amended to omit such requirement of congressional consent. Only in such instances could the state department of public works and buildings designate the route of the canal and authorize the filling in of the canal with that end in view. Prior to such consent or legislative amendment, any dumping in the channel would be justified only by the eventual construction of a highway.

Construction of a modern concrete highway upon the channel of the Illinois and Michigan Canal in lieu of the existing canal would not constitute a breach but instead a fulfillment of the state's obligation to provide the United States a useable highway "for the transportation of property of the United States or persons in its service" as provided in the Act of 1827. Construction of such highway would not divest the state of Illinois of any of its title to the channel as land in the odd numbered sections.

The Constitution of Illinois or any statute does not create, in favor of any riparian owner, an obligation of the state to continue the maintenance and operation of the Illinois and Michigan Canal as a waterway.

Citations:

Constitution: Ill. (1870), art. III (Separate).

Statutes:
3 U. S. Stat. 659, ch. XIV (1822).
4 U. S. Stat. 234, ch. LI (1827), amended in 1833.
Ill. Act authorizing appointment of canal commissioners, passed in 1829 and amended in 1831.
Ill. Act for the construction of the Illinois and Michigan Canal, passed in 1835.
Ill. Laws (1889), p. 125.
Ill. Laws (1903), p. 113.
Ill. Laws (1919), p. 976.

IRS '37, 19: 30.
33 USCA, sec. 403, p. 397.
Sanitary Canal act, in force July 1, 1931.

Cases: People v. Economy Light & Power Co., 241 Ill. 290 (1909).
Burke v. Snively, 208 Ill. 328 (1904).
People v. City of Chicago, Cir. Ct. of Cook County, No. B-282869.
City of Chicago v. McGraw, 75 Ill. 566 (1874).
Werling v. Ingersoll, 182 Ill. 25 (1899), aff'd in 181 U. S. 131 (1900).
Wells v. Wells, 262 Ill. 320 (1914).
Mortell v. Clark, 272 Ill. 201 (1916).
Walsh v. Columbus Hocking Valley & Athens R. R. Co., 176 U. S. 469 (1900).
Lake Superior & M. R. R. Co. v. U. S., 93 U. S. 442 (1876).
Ex parte Boyer, 109 U. S. 629 (1884).
Economy Light & Power Co. v. U. S., 256 U. S. 113 (1920).
Washington v. Miller, 235 U. S. 422 (1914).
Du Pont v. Miller, 310 Ill. 140 (1923).
People v. McDonnell, 362 Ill. 114 (1935).
Fox v. Cincinnati, 104 U. S. 783 (1881).
Schulenberg v. Harriman, 21 Wall. (88 U. S.) 44 (1875).
Mortell v. Clark et al., 272 Ill. 201 (1916).
Van Wyck v. Knevals, 106 U. S. 360 (1882).
St. Louis I. N. & S. R. Co. v. McGee, 115 U. S. 469 (1885).
Chicago M. & St. P. R. R. Co. v. U. S., 159 U. S. 372 (1895).
U. S. v. Northern Pacific R. R. Co., 177 U. S. 435 (1900).
Northern Pacific R. R. Co. v. Townsend, 190 U. S. 267 (1902).

Other reference: 67 Corpus Juris, p. 903.

OPINION OF FOREGOING SYNOPSIS

You have requested our opinion on the legal questions pertaining to the possibility of constructing a vehicular highway on the channel of the Illinois and Michigan Canal and filling the channel for that purpose.

Nearly a year ago the mayor, because of the great concern which he expressed regarding the necessity of providing additional dumping facilities for the disposal of waste in the city of Chicago and because of his desire, if possible, to accomplish a solution of that problem conjointly with the solution of a further problem of the city relating to the provision of additional accommodations for vehicular travel, directed this department to institute a thorough study of the many legal questions relating to the possibility of substituting a modern vehicular highway for the present Illinois and Michigan Canal, at least within the limits of the city of Chicago, and filling the channel for that purpose.

Pursuant to his direction an exhaustive study of the matter was undertaken, and a memorandum prepared which set forth in complete detail the results of that study.

The substance of that memorandum we believe fully answers your inquiry and we are herein presenting the said memorandum as our formal opinion in response to your request above mentioned.

* * *

A proper consideration of the questions which arise concerning this matter must be based upon the facts involved in the history of this canal and the legislation relating to it.

On March 30, 1822, four years after the admission of the state of Illinois into the Union, the Congress of the United States passed *"An Act to authorize the State of Illinois to open a canal through the public lands, to connect the Illinois River with Lake Michigan"* (Chap. XIV, 3 Stat. 859) the provisions of which are the following:

> *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the State of Illinois be and is hereby authorized to survey and mark, through the public lands of the United States, the route of the canal connecting the Illinois river with the southern bend of Lake Michigan; and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States, except in cases hereinafter provided for, and the use thereof forever shall be and the same is hereby vested in the said state for a canal, and for no other purpose whatever—on condition, however, that if the said state does not survey and direct by law said canal to be opened, and return a complete map thereof to the treasury department, within three years from and after the passing of this act; or if the said canal be not completed, suitable for navigation, within twelve years thereafter; or if said ground shall ever cease to be occupied by, and used for, a canal suitable for navigation, the reservation and grant hereby made shall be void and of none effect; provided always, and it is hereby enacted and declared, that nothing in this act contained, or that shall be done in pursuance thereof, shall be deemed or construed to imply any obligation on the part of the United States to appropriate any money to defray the expenses of surveying or opening said canal; provided also and it is hereby further enacted and declared, that the said canal, when completed, shall be, and forever remain, a public highway for the use of the government of the United States, free from any toll or other charge whatever, for any property of the United States, or persons in their service, passing through the same.
>
> "Every section of land through which said canal route may pass; shall be and the same is hereby reserved from future sale, until hereafter specially directed by law; and said state is hereby authorized and permitted, without waste, to use any materials on the public lands adjacent to said canal, that may be necessary for its construction."

In 1825 the General Assembly of Illinois passed an act with reference to the contemplated canal (mentioned in 181 U. S., at p. 141) but nothing was accomplished under it and in 1826 the general assembly memorialized the Congress of the United States to make a grant of public lands "to commence and complete this great and useful work."

On March 2, 1827, the Congress of the United States passed *"An Act to grant a quantity of land to the State of Illinois for the purpose of aiding in opening a canal to connect the waters of the Illinois River with those of Lake Michigan"* (Chap. LI, 4 Stat. 234) the provisions of which are the following:

> *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be, and hereby is, granted to the state of Illinois, for the purpose of aiding the said state in opening a canal to unite the waters of the Illinois river with those of Lake Michigan, a quantity of land equal to one-half of five sections in width, on each side of said canal, and reserving each alternate section to the United States, to be selected by the commissioner of the land office, under the direction of the president of the United States, from one end of the said canal to the other; and the said lands shall be subject to the disposal of the legislature of the said state, for the purpose aforesaid, and no other; Provided, that

the said canal, when completed, shall be and forever remain a public highway for the use of the government of United States, free from any toll, or other charge whatever, for any property of the United States, or persons in their service, passing through the same: Provided, that said canal shall be commenced within five years, and completed in twenty years, or the state shall be bound to pay to the United States the amount of any lands previously sold, and that the title to purchasers under the state shall be valid.

"So soon as the route of the said canal shall be located and agreed on by the said state, it shall be the duty of the governor thereof, or such other person or persons as may have been, or shall hereafter be, authorized to superintend the construction of said canal, to examine and ascertain the particular sections to which the said state will be entitled, under the provisions of this act, and report the same to the secretary of the treasury of the United States.

"The said state, under the authority of the legislature thereof, after the selection shall have been so made, shall have power to sell and convey the whole, or any part of the said land, and to give a title in fee simple therefor, to whomsoever shall purchase the whole or any part thereof."

In 1829 the Illinois General Assembly passed an act authorizing the appointment of a board of canal commissioners to explore, examine, fix and determine the route of the canal and to sell the lands and lots in the sections of land to which the state was to become entitled, and commence the work.

Under this act Governor Edwards appointed a canal commission of three members, who made the required survey and fixed the location of the canal and in 1829 the governor forwarded to Washington a copy of the survey and location of the canal. The state selected the odd-numbered sections of land in the area along the canal route, granted to the state by the act of Congress, and the even-numbered sections thus remained a part of the public lands of the United States. Title to these passed in time from the United States to settlers without any reservation regarding the canal. It was by the sale of lands in the odd-numbered sections that the state was to raise money for the construction of the canal.

For lack of funds little was accomplished under the act of 1829 and on February 15, 1831, the general assembly passed an amendatory act and under the provisions of the two acts the commissioners laid out the towns of Chicago and Ottawa and caused a new survey and estimate to be made which showed that the canal, instead of costing between $600,000 and $700,000, as the general assembly had stated in a memorial to Congress it would, would cost $4,043,386.50 (and this amount proved ultimately to be only half of the actual cost).

Because of the interest which was then beginning to be manifested in railroads as offering what might well prove to be a better answer to the transportation needs of the rapidly expanding nation than toll roads and canals had been, consideration was given to the question of whether it would be better to construct a railroad than the Illinois and Michigan canal, and in the act of 1831 the Illinois General Assembly provided:

"It shall be the duty of the superintending commissioner, to cause the engineer employed by him, to ascertain, as early in the spring as the weather will permit, whether the Calamic will be a sufficient feeder for the part of the canal between the Chicago and Des Plaines rivers, 'or whether the construction of a rail road is not preferable, or will be of more public utility than a canal.' And if the commissioners shall be satisfied of sufficiency of said river, and that a canal will be of more public utility than a rail road, it shall be their

duty to commence the excavations without delay. And if they shall be of opinion that it would not, all further proceedings in relation to said canal, and the sales of land, shall be deferred until the next meeting of the legislature; provided, however, that said commissioners shall cause such a commencement to be made in the progress of the said canal, as to bring the state within the act of Congress making said grant, so as to save said grant to the State, if they shall be of opinion sufficient has not been done already."

The possibility of the change of plan was brought to the attention of Congress and on March 2, 1833 Congress passed *"An Act to amend an act, entitled 'An Act to grant a quantity of land to the state of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois River with those of Lake Michigan,' and to allow further time to the State of Ohio for commencing the Miami canal from Dayton to Lake Erie."* Those provisions which relate to the Illinois and Michigan canal are the following:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the lands granted to the state of Illinois by the act to which this is an amendment, may be used and disposed of by said state, for the purpose of making a railroad instead of a canal as in said act contemplated; and that the time for commencing and completing said canal or railroad, whichever the state of Illinois may choose to make, be and is extended five years; *Provided,* That if a railroad is made in place of a canal, the state of Illinois shall be subject to the same duties and obligations, and the government of the United States shall be entitled to, and have the same privileges on said railroad, which they would have had through the canal, if it had been opened."

In 1835 the canal project was revived and in 1836 the General Assembly of Illinois passed *"An Act for the Construction of the Illinois and Michigan Canal,"* which was in force January 9, 1836.

On July 4, 1836 ground was first broken for the canal and twelve years later its construction was completed. It was an artificial waterway in the fullest sense of the term artificial. Where it joined the Chicago River from which it was to obtain its flow of water, the bottom of its channel was six feet above the surface of the water in the river—the plan to construct a deeper channel had long since been abandoned as too costly—and all the water which went into the canal from the river was pumped into it by feeders.

State expenditures on the canal contributed in large measure to the tragic financial condition of the state in 1842, when the state owed $14,000,000 on which it was unable to pay interest. Repudiation was openly advocated and for a time "the fair name of Illinois became freely associated with dishonor." (See *People* v. *Economy Light and Power Company,* 241 Ill. 290, at p. 315.) The resumption and completion of the construction of the canal was due to the fact that "strange as it may seem, the Illinois and Michigan Canal, in aid of which the credit of the State had been pulled down, was now confidently looked to as the only means of lifting it up" (*id.,* p. 315).

In 1870 such was the popular reaction to the financial experience of the State with reference to the canal, and the popular view of the future of the canal as an enterprise, that there was incorporated in the Illinois Constitution of 1870, a separate article (the third) which is the following:

"The Illinois and Michigan canal, or other canal or waterway owned by the State shall never be sold or leased until the specific

proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the State at a general election, and have been approved by a majority of all the votes polled at such election. The General Assembly shall never loan the credit of the State or make appropriation from the treasury thereof, in aid of railroads or canals;

"*Provided,* That any surplus earnings of any canal, waterway or water power, may be appropriated or pledged for its enlargement, maintenance or extension; * * *."

In 1889 the general assembly passed the act by which the Chicago Sanitary District was created. It was approved May 29, 1889 (Laws of Illinois, 1889, p. 125) and is entitled *"An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers."*

In 1903 the general assembly of the state passed *"An Act in relation to the sanitary district of Chicago, to enlarge the corporate limits of said district and to provide for the navigation of the channels created by such district and to construct dams, water-wheels and other works necessary to develop and render available the power arising from the water passing through its channels and to levy taxes therefor."* This act was approved May 14, 1903 (Laws of Illinois, 1903, p. 113). Among other things, it provides (section 2) that the board of trustees of the sanitary district shall have the right to provide for the drainage of additional territory, by laying out, establishing, constructing and maintaining one or more channels, drains, ditches and outlets, together with such adjuncts and additions thereto as may be necessary or proper and that they

"Shall have the right to use what is known as the 'Calumet feeder' of the Illinois and Michigan Canal and lands adjacent to such feeder belonging to the State of Illinois for the site of any such channel, within the limits of the county in which such district is situated, in such manner as said district may elect, and shall also have the right to construct a channel across said Illinois and Michigan Canal, without being required to restore said Illinois and Michigan Canal or said feeder to its former usefulness. If, by reason of said abandonment, a stagnant stream or pool of water shall remain upon the deposits of Chicago sewage, accumulated in said Illinois and Michigan Canal by reason of its years of usefulness by the City of Chicago as a sewage outlet, said sanitary district shall fill up said canal to a depth sufficient to remove said condition and prevent the spread of pestilence and disease throughout the territory in which said Illinois and Michigan Canal is abandoned."

And the act further provided (section 2) that

"before any such channel is constructed across said Illinois and Michigan canal, or the navigation of said canal in any manner interfered with, said sanitary district of Chicago shall connect its present main channel from the controlling works at Lockport with the upper basin of the Illinois and Michigan Canal at Joliet by a channel of a depth of not less than ten (10) feet and a width of not less than one hundred and sixty (160) feet through its entire length."

In the same section further provision is made with reference to the construction of locks and for the furnishing and providing of a site upon which the state through its canal commissioners shall have the right to erect a suitable office building, and it is then further provided by the act that

"the Canal Commissioners shall have such authority in and about said lock as is necessary to enforce the rules and regulations pre-

scribed by them pertaining to the governing navigation on the Illinois and Michigan Canal."

Section 3 of the act provides that the sanitary district

"shall permit all water craft navigating or proposing to navigate said Illinois and Michigan Canal to navigate the water of all said channels of said sanitary district promptly, without delay and without payment of any tolls or lockage charges for so navigating in said channels."

And in Section 8 it is provided that

"The said sanitary district shall, at the expense of said district, in all respects comply with the provisions of the acts of Congress of March 22, 1822, and March 2, 1827, as construed by the courts of last resort of the State of Illinois and of the United States, in relation to the Illinois and Michigan Canal, so far as it affects that portion of the Illinois and Michigan Canal vacated or abandoned by the terms of this act."

At the turn of the century the Illinois and Michigan Canal had reached a status which is set forth by the Supreme Court of Illinois in 1904 (in *Burke* v. *Snively,* 206 Ill. 328, pp. 348-9, which was a suit brought to enforce the constitutional provisions hereinabove quoted—the Third Separate Section—by enjoining the expenditure of state funds on the canal) as follows:

"It is not inappropriate to remark that the fears entertained by members of the constitutional convention that more modern and more speedy means of transporting passengers and commodities would soon supplant the canal and divert traffic from it, and the canal would become practically of no use as a waterway or highway of traffic and commerce and would cease to produce an income sufficient to pay the expenses connected with its management, and would, unless restrained by the constitution, become a regular applicant at the door of the State treasury for appropriations of money of the taxpayers of the State, have been verified. In 1876 the tolls received for the use of the canal aggregated $113,223, but since that year there has been a marked and substantially gradual decrease in such receipts. In 1900 so little demand was there for the canal as a highway or waterway for transportation of persons or property that but $13,267 were paid as tolls. In 1901 the use of the canal for the purpose of trade or commerce was so little availed of that but $8120 were collected from tolls. The gross receipts were much larger in all the years than the sum stated, but the excess arose from sales of ice privileges and sales of water power. But in addition to all receipts, of every character, during these years, heavy appropriations from the treasury of the State, amounting to something more than one-half a million dollars, have been asked and obtained from the public treasury to meet the deficiencies arising from the management and operation of the canal. The canal has practically fallen into disuse for any of the purposes of transportation of either persons or property, and has been perverted to mere commercial purposes of supplying water power to those along its banks and selling privileges to cut ice from its pools. It is no longer a highway of commerce."

In 1919 the General Assembly of Illinois passed *"An Act in relation to the Illinois and Michigan Canal and the canal lands, the protection, preservation and disposition thereof, and to repeal all Acts and parts of Acts in conflict therewith."* (Laws of Illinois, 1919, page 976; Ill. Rev. Stat., 1937, Chap. 19, Sec. 30.) The act was approved June 18, 1919 and went into force July 1, 1919. Sections 3 and 4 of said act are as follows:

"3. The Department of Public Works and Buildings is authorized and directed to protect against and prevent encroachments upon said Illinois and Michigan Canal through its entire course as originally constructed, and to preserve its navigable condition throughout said entire course, and it may, when the permission of the Federal government is obtained, change and improve said canal to provide terminal and harbor facilities for interchange of freight or for any other use in connection with transportation which said department may deem advantageous to the State. No permission heretofore or hereafter granted, which results in obstruction to the navigable condition or capacity of any portion of said canal or interferes with its use for any of the purposes herein named shall operate in any water whatever to deprive the State of any of its rights in said canal or canal lands, and all obstructions or structures heretofore or hereafter erected or placed in said canal shall be subject to removal upon the order of said Department of Public Works and Buildings. Provided, however, the use of the Sag channel of the Sanitary District of Chicago shall not be prevented nor shall it be considered an obstruction within the meaning of this section, but the State may require, in the development of its waterways and the use of said Illinois and Michigan canal such changes in the crossing of the Illinois & Michigan canal by said Sag channel as may be necessary for the use of said Illinois & Michigan canal by the State.

"4. The Attorney General of the State of Illinois is hereby authorized and directed to institute in the name of the People and to prosecute whatever suits are necessary to protect and maintain the rights of the State in and to said Illinois and Michigan Canal throughout its entire ninety-six mile course from the south fork of the south branch of the Chicago River to the point at which it connects with the Illinois at La Salle."

Under this statute, on February 5, 1934, the city of Chicago was enjoined from encroaching upon "The right of way of the Illinois and Michigan Canal" and from "dumping rubbish, tin cans, ashes and other waste materials in said right of way," by a decree entered by Judge Joseph Burke in the case of *The People of the State of Illinois, ex rel. Otto Kerner, Attorney General, and Robert Kingery, Acting Director of the Department of Public Works and Buildings of the State of Illinois,* v. *The City of Chicago,* General Number B-282869 in the Circuit Court of Cook County. The provisions of said decree are the following:

"This cause coming to be heard upon the Information of the People of the State of Illinois, upon the relation of Otto Kerner, Attorney General of Illinois, and Robert Kingery, Acting Director of the Department of Public Works and Buildings of the State of Illinois, the answer thereto of the defendant, City of Chicago, a municipal corporation, and the evidence given in support of the allegations contained in said information and answer and the court, having heard the (sic) considered the arguments of counsel, finds as follows:

"A written stipulation of facts has been entered into by the respective parties in lieu of evidence in support of said information and answer, which stipulation of facts, together with the exhibits referred to therein, constitute all of the testimony offered in support of said information and answer.

"The right of way of the Illinois and Michigan Canal is a part of the public lands of the State of Illinois and the State of Illinois is the owner of the same throughout its entire course as originally constructed including said right of way in sections 35 and 36, township 39, north, range 13 east of the third principal meridian, in Cook County, Illinois.

"The defendant, City of Chicago, a municipal corporation, has encroached upon said right of way in said sections 35 and 36 for some time last past and continues to encroach at the present time. Said encroachments consist of filling up said right of way by said defendant by the dumping of rubbish, tin cans, ashes and other waste material in and upon said right of way. Said encroachments are wrongful and unlawful and said defendant will continue to so encroach in said right of way in said Sections 35 and 36 and in said right of way elsewhere along the course of said canal unless enjoined by this court. Without the injunction of this court to prevent said encroachments, great and irreparable harm and injury will result to the State of Illinois.

"NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the defendant, City of Chicago, a municipal corporation, its officers, agents and employees and all other persons acting under the direction and control of said defendant, be and are hereby forever enjoined from encroaching upon the right of way of the Illinois and Michigan Canal in sections 35 and 36, township 39, north range 13, east of the third principal meridian in Cook County, Illinois, and in said right of way elsewhere along the course of said canal and from dumping rubbish, tin cans, ashes and other waste materials in said right of way in said sections 35 and 36 and in said right of way elsewhere along the course of said canal and that the People's writ of injunction issue instanter out of and under the seal of this Honorable Court forever enjoining City of Chicago, the defendant, its officers, agents and employees from encroaching upon the right of way of the Illinois and Michigan Canal in sections 35 and 36, township 39, north range 13, east of the third principal meridian in Cook County, Illinois and in said right of way elsewhere along the course of said canal and from dumping rubbish, tin cans, ashes and other waste materials in said right of way in said sections 35 and 36 and in said right of way elsewhere along the course of said canal."

The proposal to construct a highway on the channel of the Illinois and Michigan Canal and the proposed filling of the channel for that purpose, requires a consideration of

(1) The respective rights of the United States and the State of Illinois in the canal as a waterway;

(2) The rights of a riparian owner in the canal as a waterway;

(3) The respective rights of the United States and the State of Illinois in the channel of the canal as land in the odd-numbered sections;

(4) The rights of riparian owners in the channel of the canal as land in the odd-numbered sections;

(5) The respective rights of the United States and the State of Illinois in the channel of the canal as land in the even-numbered sections;

(6) The rights of riparian owners in the channel of the canal as land in the even-numbered sections; and

(7) The injunction heretofore granted against the City of Chicago and the steps to be taken with reference thereto.

In determining the questions which arise concerning these rights regard must be had to the acts of Congress of 1827 and 1833, and the act of 1822 must be disregarded.

In *City of Chicago* v. *McGraw* (1874), 75 Ill. 566, it was contended that the state of Illinois held title to 90 feet of land on each side of the canal, under the Act of Congress of 1822. The Supreme Court of Illinois held contrary to this contention and said:

"The act of congress of March 2, 1827, does not purport to be an amendment of the act of March 30, 1822, nor does it, even by inference, refer to it. In our opinion, these acts constitute distinct and independent offers, by the government of the United States, of aid to the State in the construction of canals, and the latter one having been accepted, without reference to the terms and conditions of the former, the State is only entitled to the grant which it conveys."

In *Werling* v. *Ingersoll* (1899), 182 Ill. 25 the same contention was again made and the decision of the Supreme Court was contrary to it. From the judgment entered by the Supreme Court of Illinois an appeal was prosecuted to the Supreme Court of the United States—*Werling* v. *Ingersoll* (1900), 181 U. S. 131. The Supreme Court of the United States affirmed the judgment of the Supreme Court of Illinois and said:

"Upon all the facts in the case it is plain that the act of 1822 was mutually abandoned by the parties so far as concerned the land grant after the passage of the act of 1827, and that the right of way through the reserved sections was treated and regarded as impliedly granted by the latter act, under which the larger grant was made, and that the map was filed under that act, and none was ever filed under the act of 1822. The State never took title to the strip of land ninety feet wide on each side of the route of the canal through the public lands, so far as related to the sections reserved to the United States by the act of 1827, of which section ten herein involved was one.

"It is not a question of forfeiture of the grant under the act of 1822. There was no forfeiture; it was a mutual abandonment of that act for the act of 1827. Taking all the facts into consideration, the State never acquired an absolute title to the ninety foot strip, as by the language of the act of 1822 the use only was granted, and it required a subsequent filing of a map as provided for in that act before the right to the use was acquired and made definite and fixed as to any particular land, and before that time arrived the act of 1827 was passed, which was to a certain extent inconsistent with the former act, and the State in fact thenceforth proceeded under the later act and filed its map thereunder and constructed the canal with reference thereto."

The decisions in the *McGraw* and *Werling* cases were adhered to in *Wells* v. *Wells* (1914), 262 Ill. 320 and in *Mortell* v. *Clark, et al.* (1916), 272 Ill. 201.

Since the act of 1827 entirely superseded and replaced the act of 1822 the questions with which this opinion is concerned are not affected by the provisions of the act of 1822 that the use of the land granted "forever shall be and the same is hereby vested in the said state for a canal, and for no other purpose whatever"; and that "if said ground shall ever cease to be occupied by and used for a canal suitable for navigation, the reservation and grant hereby made shall be void and of none effect."

I.

RESPECTIVE RIGHTS OF THE UNITED STATES AND THE STATE OF ILLINOIS IN THE CANAL AS A WATERWAY.

The case of *Walsh* v. *Columbus, Hocking Valley and Athens Railroad Co.* (1900), 176 U. S. 469 was concerned with an act of Congress of May 24, 1828 passed to aid the state of Ohio in the construction of canals. The similarity of that act to the act of 1827 granting land to the state of Illinois for the same purpose is shown by section 5 of that act, which is as follows:

"Sec. 5. And be it further enacted, That there be, and hereby is, granted to the State of Ohio five hundred thousand acres of the lands owned by the United States, within the said State, to be selected as hereinafter directed, for the purpose of aiding the State of Ohio in the payment of the debt, or the interest thereon; which has heretofore been, or which may hereafter be, contracted by said State in the construction of the canals within the same, undertaken under the authority of the laws of said State, now in force, or that may hereafter be enacted, for the extensions of canals now making; which land, when selected, shall be disposed of by the legislature of Ohio, for that purpose, and no other: *Provided,* The said canals, when completed or used, shall be, and forever remain, public highways, for the use of the Government of the United States free from any toll or charge whatever, for any property of the United States, or persons in their service passing along the same; *And provided further,* That the said canals, already commenced, shall be completed in seven years from the approval of this act, otherwise the State of Ohio shall stand bound to pay over to the United States the amount which any lands sold by her, within that time, may have brought; but the validity of the titles derived from the State by such sales shall not be affected by that failure."

On April 12, 1894 the Columbus, Hocking Valley and Athens Railroad Company, the defendant in the case, was organized for the purpose of building a railroad between the termini of the canal, and on May 18, 1894 the General Assembly of the State of Ohio passed an act entitled "An Act to provide for the abandonment of the Hocking Canal for canal purposes and for leasing the same to the Columbus, Hocking Valley and Athens Railroad Company." The Hocking Canal had been constructed under the act of Congress and by the aid of the grant of land therein made. The plaintiff owned land on both sides of the Hocking Canal and he sought to enjoin the railroad company from entering upon the canal property and from constructing a railroad thereon. His suit also sought a decree declaring void the Act of the General Assembly of Ohio providing for the abandonment of the canal and the leasing of it to the railroad company. The gist of his complaint lay in the allegation that the Act in question authorizing the abandonment of the canal conflicted with the provisions of the United States Constitution that "no state shall pass any law impairing the obligation of contracts," the plaintiff contending that the act of Congress of 1828 donating lands to the state of Ohio in aid of the construction of canals and the act of the general assembly of that state accepting the grant, created a contract for the perpetual maintenance of the canal. In rejecting this contention the Supreme Court of the United States, in the case cited, said:

"* * * The principal object of the act was the donation of lands to aid the State in works of internal improvement, which were then being extensively contemplated in the newer States of the West. Canals, at that time, embodied the most advanced theories upon the subject of internal transportation. Congress annexed as a condition to the grant that the canals built by its aid should 'when completed or used, be and forever remain, public highways, for the use of the Government.' * * * Whatever be the proper interpretation of these words, and they are by no means free from ambiguity, the dominant idea of the proviso was evidently to compel the State to maintain the canals as *public* highways, and to allow the Government free use of them 'for any property of the United States, or persons in their service passing along the same.' Whether the canals should be maintained forever as such, or should give place to more modern methods of transportation, was a matter of much less moment to the United States than to the State. The General Government was only inter-

ested in securing their use for the public, and the free transportation of its own servants and property. The object of the act was to facilitate and encourage public improvements, but not to stand in the way of the adoption of more perfect methods of transportation which might thereafter be discovered. Had the question of internal improvements arisen ten or fifteen years later, when railways began to be constructed, it is quite improbable that the State would have embarked upon this system of canals, or that Congress would have aided it in the enterprise. Waiving the question whether the State could have abandoned the lands upon which these canals were built as public highways, we think it entirely clear that Congress could not have intended to tie the State down to a particular method of using them, when subsequent experience has pointed out a much more practicable method, which has supplanted nearly all the canals then in use. There was no undertaking to keep up the canals for all time, and we think the proper construction of the proviso is that the Government should be entitled to the free use of the canals so long as, and no longer than they were maintained as public highways, and that the act of 1894, leasing these lands to the defendant for an analogous purpose, does no violence to the contract clause of the Constitution.

So far as the question with which this opinion deals are concerned, the decision in the *Walsh* case must be read in the light of the act of Congress of 1833 providing "that the lands granted to the state of Illinois, * * * may be used and disposed of by said state for the purpose of making a railroad, instead of a canal" and the decision of the United States Supreme Court in *Lake Superior & M. R. R. Co.* v. *United States* (1876), 93 U. S. 442, construing a similar act of Congress and discussing at length the act of 1833 in that connection.

In the case just cited the facts show that an act of Congress of May 5, 1864 had made a grant of land to the state of Minnesota to aid in the construction of the plaintiff's road. The act provided, among other things, that "the said railroad shall be, and remain, a public highway, for the use of the government of the United States, free from all toll or other charge for the transportation of any property or troops of the United States."

The plaintiff railroad had transported troops of the United States and prosecuted in the Court of Claims a claim for compensation for transporting them. The claim was resisted by the government on the ground that the transporting of the troops was within the rights and privileges reserved to the United States in the grant of land made to the state of Minnesota to aid in the construction of the plaintiff's road. The Court of Claims disallowed the claim for compensation and an appeal to the United States Supreme Court followed. That court in a five-to-four decision reversed the Court of Claims and held that the provision that "the said railroad shall be, and remain, a public highway for the use of the Government of the United States, free from all toll or other charge for the transportation of any property or troops of the United States," reserved in the United States only a right to use the railroad of the plaintiff as a highway and did not confer upon or vest in the United States any right to use of the equipment or services of the plaintiff without compensation. The court reasoned that the act would have to be construed according to the meaning popularly attached to a railroad at the time of its passage, that this popular conception of a railroad was that which prevailed when railroads were first being introduced as a means of public communication in this country and that then railroads were generally expected to be merely public highways, on which every man who could procure the proper carriages and apparatus would have the right to travel. By this reasoning the court reached the conclusion that the plaintiff railroad was entitled to compensation for all transportation by it of troops and property of the

government (excepting the mails which had to be carried free under other provisions of the act) subject to a fair deduction for the use of the railroad right of way as a highway.

In the course of its discussion of the questions which it decided, the court specifically referred to and discussed the grant of 1827 to the state of Illinois and the act of 1838 providing that a railroad might be constructed in lieu of a canal. As to these the court said (pp. 445-446):

> "On the 2d of March, 1827, an act, with precisely the same reservation, was passed, making a grant of land to the State of Illinois, to aid in opening a canal to unite the waters of the Illinois River with those of Lake Michigan. 4 Stat. 234. On the 2d of March, 1833, an amendment to this act was passed, which declared 'that the lands granted to the State of Illinois, by the act to which this is an amendment, may be used and disposed of by said State for the purpose of making a railroad, instead of a canal, as in said act contemplated; . . . *Provided,* that if a railroad is made in place of a canal, the State of Illinois shall be subject to the same duties and obligations, and the government of the United States shall be entitled to and have the same privileges on said railroad, which they would have had through the canal if it had been opened.' Evidently the only thing reserved in this case was the use of the road.
>
> "It will be observed that the last cited act was passed in 1833, when railroads were about being introduced as means of public communication in this country. It is undoubtedly familiar to most of those whose recollection goes back to that period, that railroads were generally expected to be public highways, on which every man who could procure the proper carriages and apparatus would have the right to travel. This was the understanding in England, where they originated. Tne Railway Clauses Consolidation Act, passed in 1842, provided in detail for the use of railways by all persons who might choose to put carriages thereon, upon payment of the tolls demandable, subject to the provisions of the statute and the regulations of the company. Acts of 5 and 6 Vict. c. 55. And suits were sustained to compel railway companies to keep up their roads for the use of public. *King* v. *Severn R. Co.,* 2 B. & A. 646; *Queen* v. *Grand Junction,* 4 Q. B. 18; 2 Redf. sect. 249; Pierce's American Railway Law, 519. Most of the early railroad charters granted in this country were framed upon the same idea."

Under the acts of Congress of 1827 and 1833 and the decisions of the United States Supreme Court in the *Walsh* and *Lake Superior* cases, the following conclusions must be reached:

The act of 1827 has been complied with by the actual construction of the canal and its maintenance and operation for more than a half century. The remaining condition of that act, that "the said canal, when completed, shall be and forever remain, a public highway, for the use of the government of the United States, free from any toll, or other charge whatever, for any property of the United States, or persons in their service passing through the same," construed together with the act of 1833 permitting the state of Illinois to substitute a railroad for a canal must, in the light of the *Walsh* and *Lake Superior* cases, be held to exact nothing more than that the state of Illinois shall provide a highway upon which the United States may at all times place and operate its carriages, cars, vehicles or equipment for the purpose of transporting any property of the United States or persons in its service passing over this route. If that highway is to be a canal, then the rights of the United States must consist in the enjoyment of the privileges of navigating its canal boats in the canal for the accomplishment of the transportation it requires. (See pp. 444-445 of the opinion in *Lake Superior & M. R. R. Co.* v. *United States,* 93 U. S. 442,

where this is specifically held by the court.) If the highway is to be a railroad under the act of 1833, then the rights reserved to the United States must consist of the enjoyment of the privilege of placing upon the railroad, as a highway, its own railroad cars and other equipment for the purpose of effecting the desired transportation. The difficulty of providing such equipment as canal boats, railroad cars, locomotives, etc., would prove an impediment to a convenient and effective use of the highway by the United States. The course of experience in transportation has not only made the motor truck a more practical vehicle for use upon public highways in the circumstances in which the United States would require the use of a highway for transportation, but it has led to the adoption of that form of transportation by the United States itself in the movement of its property and the transportation of persons in its service, not only with reference to its military activities, but otherwise. A modern concrete highway would therefore certainly constitute a most advantageously usable highway "for the transportation of property of the United States or persons in its service." To construct such a highway upon the channel of the Illinois and Michigan Canal, and in lieu of the canal itself, would therefore not constitute a breach but would amount to a continued fulfillment, according to the best modern adaptation, of the obligation of the state of Illinois to provide to the United States a highway for the purposes which the provisions of the act of 1827 obviously sought to serve.

It is now in order to show why the foregoing conclusions are not in conflict with certain decisions which might at first appear to oppose them. In *Ex Parte Boyer* (1884), 109 U. S. 629 the Supreme Court of the United States held the Illinois and Michigan Canal to be a navigable water of the United States, saying (pp. 631-632):

> "The Illinois and Michigan canal is an artificial navigable waterway connecting Lake Michigan and the Chicago river with the Illinois river and the Mississippi river. * * *"
>
> * * *
>
> "* * * We take judicial notice of the historical fact that the canal, 96 miles long, was completed in 1848, and is 60 feet wide and 6 feet deep, and is capable of being navigaged by vessels which a canal of such size will accommodate, and which can thus pass from the Mississippi river to Lake Michigan and carry on inter-State commerce, although the canal is wholly within the territorial bounds of the State of Illinois. * * *"
>
> "* * * Navigable water situated as this canal is, used for the purposes for which it is used, a highway for commerce between ports and places in different States, carried on by vessels such as those in question here, is public water of the United States, and within the legitimate scope of the admiralty jurisdiction conferred by the Constitution and statutes of the United States, even though the canal is wholly artificial, and is wholly within the body of a State, and subject to its ownership and control; * * *"

The question decided in the *Boyer* case was whether the Court of Admiralty had jurisdiction over a claim growing out of a collision of two boats navigating the Illinois and Michigan Canal. This merely required the court to decide whether, so long as the canal was a waterway *in fact,* it was such a navigable water as to support the jurisdiction of the Admiralty Court. This question the court decided, and it decided nothing more. The right to substitute a different kind of highway for the canal was not involved, and nothing which is found in the court's opinion can be regarded as having any bearing upon that matter.

In *Economy Light & Power Company* v. *United States* (1920), 256 U. S. 113, the United States sued for an injunction to restrain the Economy

Light & Power Company from constructing a dam in the Des Plaines River without the consent of the Congress of the United States or the General Assembly of the State of Illinois, and without approval of the location and plans by the chief of engineers and the secretary of war of the United States. The case was based upon the following federal statute (U. S. C. A., Title 33, Sec. 403, p. 397):

> "Sec. 403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in. The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same. (Mar. 3, 1899, c. 425, sec. 10, 30 Stat. 1151.)"

It was contended by the defendant that the Des Plaines River had ceased to be navigable and that therefore the foregoing statute did not apply to it. The United States Supreme Court held contrary to this contention, saying:

> "We concur in the opinion of the Circuit Court of Appeals that a river having actual navigable capacity in its natural state and capable of carrying commerce among the States, is within the power of Congress to preserve for purposes of future transportation, even though it be not at present used for such commerce, and be incapable of such use according to present methods, either by reason of changed conditions or because of artificial obstructions. And we agree that the provisions of Section 9 of the Act of 1899 (30 Stat. 1151) apply to such a stream. The act in terms applies to *'any . . .* navigable river, or other navigable water of the United States'; and, without doing violence to its manifest purpose, we cannot limit its prohibition to such navigable waters as were, at the time of its passage, or now are, actually open for use. The Des Plaines River, after being of practical service as a highway of commerce for a century and a half, fell into disuse, partly through changes in the course of trade or methods of navigation, or changes in its own condition, partly as the result of artificial obstructions. In consequence, it has been out of use for a hundred years; but a hundred years is a brief space in the life of a nation; improvements in the method of water transportation or increased cost in other methods of transportation may restore the usefulness of this stream; since it is a natural interstate waterway, it is within the power of Congress to improve it at the public expense; and it is not difficult to believe that many other streams are in like condition and require only the exertion of federal control to make them again important avenues of commerce among the States. If they are to be abandoned, it is for Congress, not the courts, so to declare. The policy of Congress is clearly evidenced in the Act of 1899, and, in the present case at least, nothing remains but to give effect to it."

What the court in this case said on the general proposition that a navigable water of the United States retains its character as such until the Congress shall otherwise declare has no bearing upon the question with which this opinion is concerned for the reason that the effect of specific provisions such as are found in the acts of 1827 and 1833 was not involved in the case or decided by the court. So far as the decision applies and gives effect to the statute of 1899, it is not decisive of the question here discussed because the statute itself is not decisive of it. To permit the act of 1899 to supercede the acts of 1827 and 1833, or alter or limit their effect, would require that the act of 1899 be construed as repealing, to some extent at least, the earlier acts, but such an application of the latter act would not be tenable.

Reference must here be made to the case of *Washington* v. *Miller* (1914), 235 U. S. 422. That case involved two provisos of the act of Congress of March 1, 1901, which laid down rules to govern the descent of lands of the Creek Indians. It was contended that these provisos were, by implication, repealed by an act of Congress of April 28, 1904. The contention thus made, the court's decision upon it, and the principles upon which the court based its decision are stated in the opinion as follows (pp. 427-428):

> "It next is insisted that the two provisos were repealed by a provision in the act of April 28, 1904, c. 1824, 33 Stat. 573, reading as follows:
>
> "'All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estate in said Territory, whether Indian, freedmen, or otherwise, . . .'
>
> "No repealing clause accompanied this provision, so the question is, did it repeal the provisos by implication. There is no doubt that, if taken literally, it would subject the Creek lands to the Arkansas law of descent and distribution without any qualification or restriction. But this would be only by reason of the generality of its terms, for it made no mention of that law or of those lands. In short, it was plainly a general statute and did not show that the attention of Congress was then particularly directed to the descent of the lands of the Creeks. On the other hand, section 6 of the supplemental agreement and its two provisos dealt with that subject in specific and positive terms which made it certain that the Creeks and their lands were particularly in mind at the time. In these circumstances we think there was no implied repeal, and for these reasons: First, such repeals are not favored, and usually occur only where there is such an irreconcilable conflict between an earlier and a later statute that effect reasonably cannot be given to both (*United States* v. *Healey,* 160 U. S. 136; *United States* v. *Greathouse,* 166 U. S. 601, 605); second, where there are two statutes upon the same subject, the earlier being special and the later general, the presumption is, in the absence of an express repeal, or an absolute incompatibility, that the special is intended to remain in force as an exception to the general (*Townsend* v. *Little,* 109 U. S. 504; *Ex parte Crow Dog, Id.* 556, 570; *Rodgers* v. *United States,* 185 U. S. 83, 87-89); and, third, there was in this instance no irreconcilable conflict or absolute incompatibility, for both statutes could be given reasonable operation if the presumption just named were recognized."

In our case the acts of 1827 and 1833 are special. The act of 1899 is general, and does not purport expressly to repeal, in whole or in part, either of the earlier acts. There is no irreconcilable conflict because effect can be given to the act of 1899 and the acts of 1827 and 1833 by holding that under the acts of 1827 and 1833 (in accordance with the *Walsh* case

and *Lake Superior* case) the rights of the United States in and to the Illinois and Michigan Canal and its channel are such as will be satisfied by the construction of a modern highway upon which the United States may place and operate its equipment for the transportation of its property or persons in its service, and construing the act of 1899 to relate only to the filling up of a channel where that is not done in preparation for the construction of a highway which will fulfill the requirements of the earlier acts. This construction and application of the act of 1899 would accomplish all that its context gives any reason to believe Congress had in view when the act was passed. It follows that the *Economy* case cannot be held to be decisive of such questions as arise upon the acts of 1827 and 1833 and were considered and decided in the *Walsh* and *Lake Superior* cases.

The general holding of the court in the *Economy* case on the question of the retention of classification as a navigable stream by a waterway once navigable in fact was followed by the Supreme Court of Illinois in *DuPont* v. *Miller* (1923), 310 Ill. 140. In that case the complainant sought to enjoin the director of the department of public works and buildings of the state of Illinois and the superintendent of waterways of that department "from interfering with, hindering or obstructing him from constructing a bulkhead across the entry of a waterway known in this record as the DuPont Slip or magazine slip." The complainant alleged that this was a private waterway and the defendants contended it was public. In deciding the question thus raised the court, following the decision in the *Economy* case, said (pp. 145-146):

> "By the Ordinance of 1787 establishing the Northwest Territory, the State of Illinois has full and complete jurisdiction over all navigable waters within its borders, subject only to the power of the Federal Government to enact such legislation and make such regulations as relate to interstate commerce. * * *
>
> "It cannot well be doubted that the slip in this case was for many years subsequent to 1870 used for purposes of navigation, but counsel for appellant urge that there cannot now exist any easement or right of navigation therein because it is not now, in fact, navigable; that portions of it have been filled in and the entrance to it is so shallow as not to admit boats of the size ordinarily used in commerce on the lakes and rivers. The rule as announced in *Economy Light and Power Co.* v. *United States, supra,* is, that if a river has once been navigable it is within the power of Congress to preserve it for purposes of future transportation though it be not at present used for commerce and though it be incapable of such use according to present methods, either by reason of changed conditions or because of artificial obstructions. In that case the Desplaines river was held to be navigable though the record showed that for one hundred years it had not, in fact, been navigated. There is no doubt that for forty years after the opening of this slip it was navigated, and the record shows that with a comparatively small expense it can be cleaned out and restored to its full usefulness as navigable water."

The waterway with which the *DuPont* case was concerned was a slip connected with the Chicago River and when it was navigable vessels could move into and out of it from and into the river. Like the *Economy* case, the *DuPont* case is distinguishable from the situation with which this opinion deals, in that there was not presented to the court, nor did the court decide, any question related to the effect of specific provisions of acts of Congress such as those relating to the Illinois and Michigan Canal.

In *People, ex rel.* v. *McDonnell* (1935), 362 Ill. 114, the people of the state of Illinois on the relation of the attorney general and the director of the department of public works and buildings filed their complaint in

the Circuit Court of Cook County praying that the defendant, Patrick E. McDonnell, be perpetually enjoined from encroaching upon the right of way of the Illinois and Michigan Canal which they alleged to be a part of the public lands of the state of Illinois. The defendant contended that the state had only an easement in the right of way of the canal and that this easement had been abandoned by non-user and by the building of the drainage canal. The state contended that there had been no abandonment of the Illinois and Michigan Canal, and that in order to deprive the state of Illinois and the federal government of the control of this canal, which became and remained part of the navigable waters of the United States and of the state, an act of Congress was required. The court said:

> "It was held that the Illinois and Michigan Canal was one of the navigable waters of the United States, in *Ex parte Boyer,* 109 U. S. 629. Since that is true, and although the canal was an artificial waterway, it is within the power of the State to preserve the canal for future transportation; and this is true even though at the present time it is incapable of such use. *DuPont* v. *Miller,* 310 Ill. 140; *Economy Light and Power Co.* v. *United States,* 256 U. S. 133. See, also, *Burke* v. *Snively,* 208 Ill. 328.
>
> * * *
>
> "In the *Economy Light and Power Co.* case it is said, at page 124: 'If they are to be abandoned, it is for Congress, not the courts, so to declare. The policy of Congress is clearly evidenced in the act of 1899, and in the present case at least, nothing remains but to give effect to it.' "
>
> "No act of Congress or of the legislature of our State has been passed expressly abandoning the Illinois and Michigan Canal. On the other hand, the appellees call attention to the fact that sections 49 and 52 of the Civil Administrative Code (Ill. State Bar Stat. 1935, p. 786; 127 S. H. A. 49, 52;) and paragraphs 32 and 33 of Chapter 19, (*ibid.* p. 199; 19 S. H. A. 32, 33;) give supervision of the Illinois and Michigan Canal to the Department of Public Works and Buildings, provide against and authorize the removal of obstructions in the canal as originally constructed, and authorize and direct the Attorney General to institute and prosecute whatever suits are necessary to protect and maintain the rights of the State in and to this canal throughout its entire ninety-six-mile course, from the south fork of the South Branch of the Chicago river to the point at which it connects with the Illinois river at La Salle.
>
> "From what has been said it fully appears that no right of the State of Illinois has been abandoned in and to the Illinois and Michigan Canal. It was a part of the navigable waters of the United States, and it could not become otherwise, regardless of its physical condition of unnavigability, without an act of Congress. The Attorney General and Director of the Department of Public Works and Buildings were authorized by statute and directed to protect and maintain this canal and the rights of the public therein."

The only question presented and decided in the *McDonnell* case was whether there had been such an abandonment of the canal as to vest title to part of its channel in a private person who claimed title in fee simple by *mesne* conveyances from another, who claimed under a patent from the United States which made no reservation regarding the canal. The question as to what use might be made of the canal right of way by the state of Illinois under the acts of 1827 and 1833, without impairing the rights of the United States, could not arise on the facts in that case and of course was not decided by the court. The effect given by the court to the act of 1899 is precisely that which has been shown herein to be the effect it should have—to prevent encroachments not incident to the

preparation of the channel for use as a highway—in order that its effect may be concurrent with that of the acts of 1827 and 1833, under the decisions in the *Walsh* and *Lake Superior* cases.

II.

RIGHTS OF RIPARIAN OWNERS IN THE CANAL AS A WATERWAY.

The third separate section of the Illinois Constitution of 1870 provides:

> "The Illinois and Michigan canal, or other canal or waterway owned by the State shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the State at a general election, and have been approved by a majority of all the votes polled at such election. The General Assembly shall never loan the credit of the State or make appropriations from the treasury thereof, in aid of railroads or canals;
>
> *"Provided,* That any surplus earnings of any canal waterway or water power, may be appropriated or pledged for its enlargement, maintenance or extension, * * *"

In *Burke* v. *Snively* (1904), 208 Ill. 328, the Illinois Supreme Court held that the constitutional prohibition of the sale or lease of the Illinois and Michigan Canal, without the approval of a majority of all the voters voting at an election upon the question did not impose upon the legislature any duty to operate the canal, and the court further held that the provisions against loaning the credit of the State or making appropriations from the treasury in aid of railroads or canals included the Illinois and Michigan Canal. The court said:

> "The constitutional intent, then to be gathered from the entire provision is, that the power to sell or lease the canal shall remain with the people; that the control and management thereof, and the operation of the same, if that shall seem wise and best, should be possessed by the legislature, to which power of management, control and operation there was attached an inhibition against the application of the public moneys which should be derived from taxation of the property of the citizens of the State to any of the purposes of the canal, but that any moneys which should be paid into the treasury of the State as surplus earnings of the canal might be drawn therefrom and applied to the extension or enlargement of the canal. The constitutional intent was and is, that the canal shall be self-supporting and that the people of the State shall not be taxed to aid it in any way.
>
> * * *
>
> "* * * The restriction in the first sentence against the sale or lease of the canal by the General Assembly does not in express words or by fair implication impose it upon the legislature, as a constitutional duty, to operate the canal, either while it could be made to pay or in the event it failed to earn enough to pay expenses. The restriction imposed no duty on the legislature, but left the law-making body free to deal with the canal as its wisdom and judgment should dictate, save that the canal could not be sold or leased. * * *
>
> * * *
>
> "We are of the opinion that the true meaning of the constitutional provision with reference to the canal is, that the legislature should have power to operate it to the extent, and to the extent only, that the income of the canal would defray the expenses of operation,

maintenance and preservation, and that no moneys shall be appropriated from the treasury of the State in aid of the operation, maintenance or preservation thereof, and that if the earnings of the canal produced a surplus, appropriations of such surplus might be made to aid in the enlargement or extension of the canal, should the legislature deem it wise to so appropriate such surplus."

It clearly follows that the Constitution does not create in favor of any riparian owner, an obligation of the state to continue the maintenance and operation of the canal.

Nor can the act of 1827 be said to confer upon any riparian owner a right to the continued existence of the canal as a waterway. In the *Walsh* case, in which the state granted a railroad company the right to construct its railroad on the channel of a canal in aid of the construction of which the United States had granted lands upon terms closely analogous to those of the grant to the state of Illinois in aid of the Illinois and Michigan Canal, the Supreme Court of the United States held that a riparian owner had no ground for complaint. On this question the court said:

"* * * There was no undertaking to keep up the canals for all time, and we think the proper construction of the proviso is that the Government should be entitled to the free use of the canals so long as, and no longer than, they were maintained as public highways, and that the act of 1894, leasing these lands to the defendant for an analogous purpose, does no violence to the contract clause of the Constitution.

* * *

"In addition to this, however, the plaintiff stands in no position to take advantage of a default of the State in this particular. He was not a party to the Contract between the state and the Federal Government; his rights were entirely subsidiary to those of the Government; and if the latter chose to acquiesce in the abandonment of the canals, as it seems to have done, he has no right to complain. He can only sustain this bill upon the theory that his rights are equal to those of the Government, and that he can call upon the State to maintain the canal for his benefit.

* * *

"The only contract in this case was between the State of Ohio and the United States. Plaintiff was neither party nor privy to such contract. It was within the power of the Government to prosecute the State for a breach of it, or to condone such breach, if it saw fit. As it adopted the latter course and has deemed it proper to acquiesce in the abandonment of the canals and in the State turning them over to the railroad company, it does not lie in the mouth of the plaintiff to complain. This disposes of every question called to our attention in the briefs of counsel."

In *Fox* v. *Cincinnati* (1881), 104 U. S. 783, the Supreme Court of the United States held that the right of the state to abandon the canal there in question followed necessarily from the right to build it. In that case the abandonment of the canal was opposed by a riparian owner who had a lease of water passing around one of the locks of the canal, for hydraulic purposes. Concerning the right of the state to abandon the canal, the United States Supreme Court said:

"* * * There was certainly no duty resting on the State to maintain the canal for navigation any longer than the public necessities seem to require. When it was no longer needed, it might be abandoned; and, if abandoned, the water might be withdrawn altogether. Pro-

vision was made for resuming the water and stopping the supply, if the canal was kept up for navigation; but no such provision was necessary in respect to the abandonment of the whole work, because the right to abandon followed necessarily from the right to build. If the water was resumed while navigation was maintained, no matter how injuriously it affected lessees, all that could be asked of the State was to forego the further collection of rents, or refund a reasonable proportion of such as had been paid in advance. The entire abandonment of the canal could not create any different liability. * * *"

It is well settled law that the right of a riparian owner in a case of an artificial watercourse differs from the right of a riparian owner of land on a natural watercourse. In 67 C. J., at p. 903, the law is stated thus:

"The natural corporeal right to the enjoyment of an uninterrupted flow possessed by riparian owners of land on natural watercourses does not exist in the water flowing in an artificial watercourse."

This must be especially true in our case because of the unusually artificial nature of the Illinois and Michigan Canal. This is not a case where water flows naturally into an artificial channel from a river or other body of water with which it connects. The Illinois and Michigan Canal was constructed more than six feet above the Chicago River, from which it was to receive its flow of water, and all the water which it carried from the river had to be pumped into it. (See 362 Ill., at p. 118.) It is an established fact that the canal cannot produce enough earnings to pay the cost of operating it. (See the facts stated in *Burke* v. *Snively,* 208 Ill., at pp. 348-9.) It follows, therefore, in this case that if the riparian owner had a right to the continued existence of the canal as a waterway he would necessarily have also a right to the continued maintenance and operation of the pumping machinery necessary to provide the flow of water, even if this required an expenditure of State funds forbidden by the Illinois Constitution. Obviously no such right can exist.

From the foregoing it clearly follows that the filling up of the canal for the purpose of the construction of a superhighway upon its channel would not violate any rights of riparian owners in the canal as a waterway.

III.

RESPECTIVE RIGHTS OF THE UNITED STATES AND THE STATE OF ILLINOIS IN THE CHANNEL OF THE ILLINOIS AND MICHIGAN CANAL AS LAND IN ODD-NUMBERED SECTIONS.

Under the act of 1827 the state of Illinois selected the odd-numbered sections of land in the area along the canal route and it was held in *Werling* v. *Ingersoll* (1900), 181 U. S. 131, that in these sections "the whole title is granted to the State." Under the decision of the United States Supreme Court in *Schulenberg, et al.* v. *Harriman* (1875), 21 Wall. (88 U. S.) 44, the language of the act of 1827 "that there be, and hereby is, granted to the state of Illinois," etc., passed a present interest in the odd-numbered sections to the state of Illinois as of the date of the taking effect of the act of March 2, 1827, notwithstanding the location of the canal for the construction of which the grant was made was not designed until later. In reaching its conclusion the court held that the rules applicable to private transactions where instruments purport to convey lands to be afterwards designated, such instruments being treated as mere contracts to convey under the rules applicable to private transactions, and not as actual conveyances, are founded upon the common law, which requires the possibility of present identification of property as a condition to the

validity of its transfer in private transactions, and do not apply to a legislative grant because the latter operates as a law as well as a transfer of the property, and has such force and effect as the intention of the legislature requires.

The conditions upon which the grant was made were fulfilled by the construction of the canal and the operation of it for more than a half century. Under the decision in the *Walsh* case it must be held that, as to the odd-numbered sections at least, the perpetual maintenance and operation of the canal was not required.

But even if the permanent maintenance of "a canal to unite the waters of the Illinois river with those of Lake Michigan," to use the language of the act of 1827, were necessary to fulfill the conditions upon which the grant was made to the state, it may well be contended that there is a fulfillment of those conditions in the construction, maintenance and operation of the canal provided for in "An Act in relation to the sanitary district of Chicago, etc.," in force July 1, 1931, otherwise known as the Sanitary Canal. This was pointed out by the Supreme Court of Illinois in *Mortell* v. *Clark, et al.* (1916), 272 Ill. 201, where the court said:

> "* * * This Federal act did not provide just where the canal should enter Lake Michigan, simply stating that the land was granted for the purpose of opening 'a canal to unite the waters of the Illinois river with those of Lake Michigan,' etc. (Hurd's Stat. 1913, p. LXXXVIII). The sanitary district's main channel as now constructed practically complies with this act and furnishes a canal more suitable for navigation than the Illinois and Michigan canal. Furthermore, the Sag channel or cut-off is required to be navigable by said act of 1903, and the proof shows that the Calumet river is navigable to the point where it is intersected by the Sag channel. This cut-off would therefore also practically comply with the both of said Federal acts as to furnishing part of the canal for connection of the Illinois river with Lake Michigan. In *Yesler* v. *Washington Harbor Line Comrs.*, 146 U. S. 646, the court said (p. 655): 'If the location and establishment of harbor lines by these commissioners is actually in violation of the laws of the United States, their vindication may properly be left to the Federal government.' Moreover, under the reasoning of the Federal courts on very similar questions, we do not think it can be held that this act is violative of the provisions of either of said Federal acts. (See *Walsh* v. *C., H. V. & A. R. R. Co.*, 176 U. S. 469; *Corrigan Transit Co.* v. *Sanitary District,* 137 Fed. Rep. 851.) * * *"

Moreover, under the *Walsh* case, the rights of the United States with reference to any conditions to the grant are such as would be satisfied by the construction of a modern highway upon which the United States may place and operate its equipment for the transportation of any of its property, or of persons in its service.

It follows that the construction of such a highway upon the channel of the Illinois and Michigan Canal would not divest the state of Illinois of any of its title to the channel as land in the odd-numbered sections.

IV.

RIGHTS OF RIPARIAN OWNERS IN THE CHANNEL OF THE ILLINOIS AND MICHIGAN CANAL AS LAND IN THE ODD-NUMBERED SECTIONS.

The ownership by the State of Illinois of the "whole title" to the channel of the canal in odd-numbered sections excludes the possibility of any title thereto, as land, in riparian owners. In other words, so long as the title remains in the state, riparian owners have no claim to it.

If by any act of the state it should lose title to the channel as land, its title could not be assailed by a riparian owner. This was clearly held by the Supreme Court of the United States in the *Schulenberg* case, where it is said:

> "And it is settled law that no one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee, but the grantor or his heirs, or the successors of the grantor if the grant proceeds from an artificial person; and if they do not see fit to assert their right to enforce a forfeiture on that ground, the title remains unimpaired in the grantee. The authorities on this point, with hardly an exception, are all one way from the Year Books down. And the same doctrine obtains where the grant upon condition proceeds from the government; no individual can assail the title it has conveyed on the ground that the grantee has failed to perform the conditions annexed. Shep. Touch., 149; *Nicoll* v. *R. R. Co.*, 12 N. Y. 121; *People* v. *Brown*, 1 Cal., 416; *U. S.* v. *Repentigny*, 5 Wall., 267 (72 U. S. XVIII. 645); *Dewey* v. *Williams*, 40 N. H. 222; *Hooper* v. *Cummings*, 45 Me., 359; *Southard* v. *R. R. Co.*, 2 Dutch, 13."

The ruling in the *Schulenberg* case was followed in *Van Wyck* v. *Knevals* (1882), 106 U. S. 360; *St. Louis I. M. & S. R. Co.* v. *McGee* (1885), 115 U. S. 469; *Chicago M. & St. F. R. Co.* v. *United States* (1895), 159 U. S. 372; *United States* v. *Northern Pacific Railroad Co.* (1900), 177 U. S. 435, and the *Walsh* case decided the same question the same way.

V.

RESPECTIVE RIGHTS OF THE UNITED STATES AND THE STATE OF ILLINOIS IN THE CHANNEL OF THE ILLINOIS AND MICHIGAN CANAL AS LAND IN EVEN-NUMBERED SECTIONS.

Under the act of 1827 the even-numbered sections were reserved to the United States but as to these it was held in *Werling* v. *Ingersoll* (1900), 181 U. S. 131, that "When Congress under the act of 1827 granted the alternate sections to the State throughout the whole length of the public domain, in aid of the construction of the canal, it also granted by a plain implication the right of way through the reserved sections, for it cannot be presumed that the Government was granting all these alternate sections to the State for the purpose avowed, and yet meant to withhold the right to pass through the sections reserved to the United States along the route of the proposed canal." Such a right of way is more than a mere easement or right of passage. It is a title in land in the nature of a base or determinable fee, sometimes called a limited fee. (*Northern Pacific Ry. Co.* v. *Townsend*, 190 U. S. 267-271; *Rio Grande Ry.* v. *Stringham*, 239 U. S. 44-47; *New Mexico* v. *U. S. Trust Co.*, 172 U. S. 171-181.)

Under the decision in the *Schulenberg* case this base or determinable fee vested in the state of Illinois as of the date of the act of Congress, notwithstanding steps had to be taken thereafter by the State whereby the location of the sections in which the rights were to vest became certain, and the title, which previously had been imperfect, acquired precision and became attached to the land.

The title which thus became vested in the state remains in it for the purpose of accomplishing the objects of the act of 1827 and these objects must be determined in the light of the *Walsh* and *Lake Superior* cases.

VI.

RIGHTS OF RIPARIAN OWNERS IN THE CHANNEL OF THE ILLINOIS AND MICHIGAN CANAL AS LAND IN THE EVEN-NUMBERED SECTIONS.

What has been said herein with reference to the rights of riparian owners in the channel of the Illinois and Michigan Canal, as land, in the odd-numbered sections applies with equal force to the rights of such owners in even-numbered sections. However, with reference to rights of riparian owners in the even-numbered sections one further point remains to be considered.

In these sections the lands were granted or conveyed by the United States to settlers without any reservations regarding the canal and it is very likely that the legal descriptions of the lands granted or conveyed do, in some instances, include land upon which part of the channel of the canal is located. This raises the question whether the grantees of the United States took any title which could be asserted adversely to the State of Illinois if a superhighway should be constructed upon the channel of the canal in these sections.

In *Northern Pacific Railroad Company* v. *Townsend* (1902), 190 U. S. 267, the facts showed that the United States had granted the right of way by statute to a railroad company which duly filed a map of definite location and constructed its road. Grants were later made by the United States to homesteaders conveying full legal subdivisions the descriptions whereof included part of the railroad right of way. The Supreme Court of the United States held that when the railroad company filed its map of definite location and constructed its road under the grant from the United States to it, the land forming its right of way was taken out of the category of public lands subject to preemption and sale, the land department was without authority to convey rights therein, and the homesteaders acquired no interest in the land within the right of way of the railroad, notwithstanding some of it may have been within the subdivisions described in the grants which they received from the United States. On this question the court said:

> "At the outset, we promise that, as the grant of the right of way, the filing of the map of definite location, and the construction of the railroad within the quarter section in question preceded the filing of the homestead entries on such section, the land forming the right of way therein was taken out of the category of public lands subject to preemption and sale, and the land department was therefore without authority to convey rights therein. It follows that the homesteaders acquired no interest in the land within the right of way because of the fact that the grant to them was of the full legal subdivisions."

In the same case it was held that no rights to any portion of the right of way could be acquired by adverse possession under a statute of limitations of the State.

Since under the *Schulenberg* case, and the cases following it, the grant to the state of Illinois operates both as a conveyance and as a statute and the title which it granted to the state vested, as of the date of the enactment of the act of Congress, it follows that any rights of riparian owners in the even-numbered sections were acquired subject to the act of 1827, the rights granted to the state thereunder, and the rights both of the United States and of the state of Illinois to make and enjoy such use of the channel of the canal as may be appropriate under the provisions of the act of 1827 and in conformity with its provisions under the decisions in the *Walsh* and *Lake Superior* cases.

VII.

THE INJUNCTION HERETOFORE GRANTED AGAINST THE CITY OF CHICAGO AND THE STEPS TO BE TAKEN WITH REFERENCE THERETO.

In 1919 the legislature of the state of Illinois passed "An Act in relation to the Illinois and Michigan Canal and the canal lands, the protection, preservation and disposition thereof, and to repeal all Acts and parts of Acts in conflict therewith," (Laws of Illinois, 1919, page 976; Ill. Rev. Stat., 1937, Chap. 19, Secs. 32-3). The act was approved June 18, 1919, and went into force July 1, 1919. Sections 3 and 4 of said act are as follows:

> "3. The Department of Public Works and Buildings is authorized and directed to protect against and prevent encroachments upon said Illinois and Michigan Canal through its entire course as originally constructed, and to preserve its navigable condition throughout said entire course, and it may, when the permission of the Federal government is obtained, change and improve said canal to provide terminal and harbor facilities for interchange of freight or for any other use in connection with transportation which said department may deem advantageous to the State. No permission heretofore or hereafter granted, which results in obstruction to the navigable condition or capacity of any portion of said canal or interferes with its use for any of the purposes herein named shall operate in any way whatever to deprive the State of any of its rights in said canal or canal lands, and all obstructions or structures heretofore or hereafter erected or placed in said canal shall be subject to removal upon the order of said Department of Public Works and Buildings. Provided, however, the use of the Sag channel of the Sanitary District of Chicago shall not be prevented nor shall it be considered an obstruction within the meaning of this section, but the State may require, in the development of its waterways and the use of said Illinois and Michigan canal such changes in the crossing of the Illinois and Michigan canal by said Sag channel as may be necessary for the use of said Illinois and Michigan canal by the State.
>
> "4. The Attorney General of the State of Illinois is hereby authorized and directed to institute in the name of the People and to prosecute whatever suits are necessary to protect and maintain the rights of the State in and to said Illinois and Michigan Canal throughout its entire ninety-six mile course from the south fork of the south branch of the Chicago River to the point at which it connects with the Illinois at La Salle."

Under this statute, on February 5, 1934 the city of Chicago was enjoined from encroaching upon "the right of way of the Illinois and Michigan Canal" and from "dumping rubbish, tin cans, ashes and other waste materials in said right of way," by a decree entered by Judge Joseph Burke in the case of *The People of the State of Illinois, ex rel. Otto Kerner, Attorney General, and Robert Kingery, Acting Director of the Department of Public Works and Buildings of the State of Illinois* v. *The City of Chicago,* General Number B-282869 in the Circuit Court of Cook County. The provisions of said decree have been set forth in the statement of facts herein.

It is to be observed that the injunction inhibits dumping in the channel of the canal independently of preparation for the construction of a highway and that it therefore is directed against what the act plainly forbids. Dumping however, for the purpose of preparing for the construction of a highway would seem to be outside the inhibitions of the statute, provided certain conditions are complied with.

The act provides that the department of public works and buildings "may, when the permission of the federal government is obtained, change and improve said canal to provide terminal and harbor facilities for interchange of freight or for any other use in connection with transportation which said department may deem advantageous to the state." The words "for any other use in connection with transportation which said department may deem advantageous to the state" clearly authorizes the use of the channel for the construction of a modern highway which would certainly be a "use in connection with transportation" and in view of the long disuse of the channel for waterway purposes as well as the unlikelihood of any future use of it for such purposes (particularly in view of the fact that the bottom of the channel is six feet above the surface of the water in the south branch of the Chicago River from which the canal must obtain its flow of water and even a greater extent above the Sag channel which intersects it at a point outside Chicago) "advantageous to the state."

The department of public works and buildings has only such power as is expressly delegated to it, or necessarily to be implied from some express delegation of authority. As regards the Illinois and Michigan Canal the department is directed "to preserve its navigable condition throughout said entire course, and it may, *when the permission of the federal government is obtained,* change and improve said canal * * * for any other use in connection with transportation which said department may deem advantageous to the State." In enacting the law of 1919 the state legislature must be presumed to have known that the state of Illinois could convert the waterway of the canal into a roadway under the federal grant of 1827 as construed by the Supreme Court of the United States, without further consent of the Congress. Nevertheless, the state legislature, in granting authority to the department of public works and buildings to make such change in the use of the canal which the department may deem advantageous to the state, limited the authority of the department by imposing the condition that it shall secure the permission of the federal Government. In view of this express limitation we believe it would be necessary for the state legislature to amend section 3 of the act of 1919 before the department of public works and buildings of the state of Illinois could designate the route of the canal for a public road and authorize the city to fill it in with that end in view, unless consent of the Congress of the United States, which is now in session, is obtained. We have shown that in the absence of the provision in section 3 the consent of the Congress would not be necessary.

Of course if section 3 of the act of 1919 were amended, as here indicated, by the state legislature without action by the Congress, or if in pursuance of the provisions of section 3 as it now reads the limited consent of the Congress of the United States to construct a road upon the channel of the canal were secured, any dumping in the channel could be justified only by the eventual construction of a highway. If the highway project, after the dumping were done, were not consummated there would be a resulting obligation to restore the original navigable capacity of the channel of the canal for waterway purposes.

The power of the department of public works and buildings to provide for the construction of a superhighway on the channel of the Illinois and Michigan Canal and to permit the filling of the channel for that purpose, when exercised by suitable and authorized administrative action, could be carried into effect by a modification of the injunction, and the injunctive order heretofore entered against the city and this modification could be accomplished by a decretal provision excepting from their scope any dumping or filling which shall be done in preparation for the construction of a superhighway upon the channel of the Illinois and Michigan Canal.

LIABILITY FOR IMPROVEMENTS PRIOR TO CONDEMNATION PROCEEDINGS

(No. 10568—Commissioner of Subways and Superhighways—D. D. K. —November 29, 1941.)

The city will have to pay the increased value of property due to improvements made after the passage of an ordinance proposing the acquisition of such property for public purposes, provided the improvements have been made in good faith and not for the purpose of increasing the amount of compensation to be awarded in the subsequent condemnation proceeding.

Citations:
Ordinance: Ordinance re superhighway, passed October 31, 1940.
Cases: People v. Atwater, 362 Ill. 546 (1936).
Mills v. Forest Preserve District, 345 Ill. 503 (1931).
City of Chicago v. Lederer, 274 Ill. 584 (1916).
Eckhoff v. Forest Preserve District, 377 Ill. 208 (1941).
Forster v. Scott, 136 N. Y. 577, 32 N. E. 976, 18 L.R.A. 543 (1893).
City of New York v. Bacon, 196 N. Y. 255, 89 N. E. 814, 36 L.R.A. (N. S.) 273 (1909).

PROPERTY ACQUIRED FOR BRIDGE AND SUBWAY PURPOSES

(No. 10574—Commissioner of Subways and Superhighways—C. J. A. & W. H. S.—December 12, 1941.)

The cost of property acquired partly for the use of the N. State street bridge and partly for the use of the subway may be divided between the two purposes.

TERMINATION OF TEMPORARY EASEMENT IN PRIVATE PROPERTY DURING CONSTRUCTION

(No. 10583—Commissioner of Subways and Superhighways—C. B. C. —January 16, 1942.)

Judgment order authorizing temporary easement in private property for construction of a public improvement is binding on the city and the contractor ,and occupation by the contractor after expiration of time authorized by the easement renders the city liable for reasonable rental and costs of restoration of premises to condition required by terms of the easement.

REPAIR OF SIDEWALK SUPPORTS AND RETAINING WALLS

(No. 10589—Alderman, 10th Ward—S. K.—January 26, 1942.)

The liability of the city to keep its sidewalks in a reasonably safe condition for public travel extends to the repair of sidewalk supports and retaining walls.

DUCT LINE AS PART OF PUBLIC IMPROVEMENT

(No. 10597—Commissioner of Public Works—C. B. C.—February 9, 1942.)

The city may not advance any part of the Motor Fuel Tax Fund for the benefit of private interests in connection with the construction of a public improvement even though there is an agreement for reimbursement.

RELOCATION OF PUBLIC UTILITY NECESSITATED BY SUBWAY CONSTRUCTION

(No. 10615—Commissioner of Subways and Superhighways—C. J. A. & W. H. S.—March 5, 1942.)

A public utility company which obtains from the city the right to place its appliances in a street acquires no right to any particular part of the street, but must move its appliances at its own expense whenever the city needs that portion of the street for transportation purposes or improvements in connection therewith.

Citations:

Cases: Barsaloux v. City of Chicago, 245 Ill. 598 (1910).
People v. Marshall Field & Co., 266 Ill. 609 (1915).
People v. Chicago City Railway Company, 324 Ill. 618 (1927).
Scranton Gas and Water Co. v. Scranton City, 214 Pa. 586 (1906).
Sears v. City of Chicago, 247 Ill. 204 (1910).

LIABILITY FOR TEMPORARY OBSTRUCTION OF ABUTTING PROPERTY

(No. 10667—Commissioner of Public Works—D. D. K.—July 20, 1942.)

Inconvenience, expense or loss occasioned to abutting owners by the temporary obstruction of a public street made necessary by the construction of a public improvement gives no cause of action against the city.

Damages for a permanent impairment of property are based upon the difference in market value before and after the construction of the improvement, plus the cost of repairs necessary to correct same.

Citations:
Cases: Lefkovitz v. City of Chicago, 238 Ill. 23 (1908).
Chicago Flower Co. v. City of Chicago, 243 Ill. 268 (1909).
Dept. of Public Works v. McBride, 338 Ill. 347 (1930).
Peck v. Chicago Rys. Co., 270 Ill. 34 (1915).
Rigney v. City of Chicago, 102 Ill. 64 (1882).
Barnard v. City of Chicago, 270 Ill. 27 (1915).
Lydy v. City of Chicago, 356 Ill. 230 (1934).
Transportation Co. v. City of Chicago, 99 U. S. 635 (1878).
Osgood v. City of Chicago, 154 Ill. 194 (1894).

B. SPECIAL ASSESSMENTS

SUBSEQUENT PAYMENTS ON SPECIAL ASSESSMENT BONDS

(No. 10168—City Comptroller—R. J. N.—January 3, 1940.)

When all special assessment bonds of one issue had been in the hands of one person and payment had been made in full on certain bonds of that issue, then subsequent payments on the unpaid bonds should be apportioned so as to apply the largest amount in payment of the bond upon which the smallest payments have been made to date.

PAYMENT OF ASSESSMENT BY SPECIAL ASSESSMENT BOND

(No. 10370—City Comptroller—A. J. R.—November 18, 1940.)

It is the duty of the city comptroller to accept a special assessment bond in payment of the installment to which it relates, when the par value of the bond plus accrued interest is less than the assessment sought to be paid and no partial payment has been made on the bond.

Citations:
Statute: Local Improvement act, sec. 89, as amended.
Case: Friedman v. City of Chicago, 374 Ill. 545 (1940).

INTEREST ON SPECIAL ASSESSMENT BOND AFTER WRONGFUL WITHHOLDING

(No. 10375—R. J. N.—November 27, 1940.)

Interest on a special assessment bond after maturity is not payable without agreement therefor. Interest in such case is allowable only if there has been wrongful obtaining of the money as well as illegal withholding.

Citations:
Cases: Hoblit v. City of Bloomington, 87 Ill. App. 479 (1899).
Lancaster v. Springer, 239 Ill. 472 (1909).
School Directors, District No. 2 v. School Directors, District No. 4, 16 Ill. App. 651 (1885).
Cagwin v. Ball & Co., 2 Ill. App. 70 (1878).
Means v. Jenkins, 18 Ill. App. 41 (1885).
Village of Wilmette v. People, 214 Ill. 107 (1905).
City of Chicago v. Hurford, 238 Ill. 552 (1909).

PROPERTY SUBJECT TO DELINQUENT SPECIAL ASSESSMENTS

(No. 10397—Deputy Comptroller—A. J. R.—January 4, 1941.)

There has been no change in the law to cause a deviation from the established policy to permit property delinquent because of unpaid special assessments to be forfeited to the State in the default of other bidders.

Citation: Friedman, et al. v. City of Chicago, et al., 374 Ill. 545 (1940).

PAYMENT OF SPECIAL ASSESSMENTS BY BONDS

(No. 10408—City Comptroller—A. J. R.—January 21, 1941.)

The city comptroller may accept, in payment of special assessments, bonds upon which no payments have been made, regardless of whether the amounts due on the bonds do or do not exceed the special assessments sought to be paid, when the owners of such bonds consent to their cancellation and surrender to the city.

However, special assessment bonds may not be accepted in payment of delinquent special assessments where the property has been sold or forfeited for delinquent special assessments or withdrawn from sale for want of bidders.

Citations:
Statutes: IRS '37, 24: 795.
IRS '39, 24: 772, 775, 795.
IRS '39, 120: 646, 734, 753.
Cases: Elias Friedman et al. v. City of Chicago et al., 374 Ill. 545 (1940).
Rothschild v. Village of Calumet Park, 350 Ill. 330 (1932).

PAYMENT OF SPECIAL ASSESSMENTS BY BONDS

(No. 10412—City Comptroller—R. J. N.—February 3, 1941.)

Special assessment bonds should not be accepted in payment of special assessments in those cases where partial payments, either in cash or by judgment, have been endorsed upon the bonds.

Citations: Friedman, et al. v. City of Chicago, 374 Ill. 545 (1940).
How & Co. v. City of Chicago, 306 Ill. App. 571 (1940).

WAIVER OF ASSESSMENT INTEREST AND PENALTIES

(No. 10461—Alderman, 41st Ward—R. J. N.—April 21, 1941.)

The city council cannot waive interest upon an assessment on which there are bonds outstanding, since the bondholders would thereby be deprived of interest upon their bonds. In such case the council may waive only penalties by reducing the penalty rate from twelve per cent to seven per cent for the first year after forfeiture.

Citations:
Statute: IRS '39, 24: 772, 792.
Case: Rothschild v. Village of Calumet Park, 350 Ill. 330 (1932).
Other reference: Council order of March 5, 1941.

COMPROMISE OF SPECIAL ASSESSMENT TAX LIENS

(No. 10545—C. B. C.—October 21, 1941.)

The city has no power to compromise special assessment tax liens except in accordance with procedure prescribed by statute.

DISCLOSING INFORMATION ABOUT SPECIAL ASSESSMENT COLLECTIONS

(No. 10553—City Comptroller—R. J. N.—October 30, 1941.)

Information concerning collections on special assessment warrants out of which special assessment bonds are payable, should be furnished by the city comptroller only to bondholders owning bonds in the installment of the warrants about which information is sought.

INSPECTION OF SPECIAL ASSESSMENT RECORDS

(No. 10647—City Comptroller—R. J. N.—June 12, 1942.)

Books and records of special assessment collections are public records available for public inspection.

SURPLUS FUNDS IN SPECIAL ASSESSMENT ACCOUNT

(No. 10658—Committee on Finance—R. J. N.—June 26, 1942.)

Special assessments collected by the city are held in trust for the benefit of the assessees where an amount greater than needed has been collected. Such monies are subject to general laws governing trust funds.

LOST BONDS AND COUPONS

(No. 10668—City Comptroller—D. D. K.—July 24, 1942.)

Under present statutes, the city comptroller has no power to issue duplicate special assessment bonds or interest coupons for ones lost or destroyed.

INFORMATION CONCERNING BOND ISSUES

(No. 10684—City Comptroller—E. J. K.—September 10, 1942.)

Information in detail relative to special assessment bond issues should be furnished only to bondholders upon proof of ownership.

PAGE INDEX TO OPINION NUMBERS

Opinion Number	Page Number
10167	9 (Note)
10168	302
10169	70
10170	154
10171	185
10172	128
10173	154
10174	185
10175	38
10176	185
10177	166
10177 A	78
10178	130
10179	198
10180	208
10181	147
10182	178
10183	147
10184	166
10185	272
10186	154
10187	78
10188	80
10189	224
10190	178
10191	155
10192	203
10193	194
10194	250
10195	148
10196	250
10197	131
10199	3
10200	148
10201	200
10202	155
10203	26
10204	166
10205	26
10206	26
10207	9
10208	114
10209	148
10210	128
10211	128
10212	224
10213	131
10214	38
10215	10
10216	250
10217	114
10218	114
10219	38
10220	115
10221	172
10222	179
10223	73
10224	76
10225	39
10226	91
10227	148
10228	186
10229	155
10230	203
10231	208
10232	115
10233	27
10234	251
10235	262
10236	27
10238	149
10239	115
10240	156
10241	115
10242	80
10243	116
10244	10
10245	80
10246	145
10247	173
10248	116
10249	167
10250	134
10251	116
10252	145
10253	129
10254	81
10255	76
10256	116
10257	39
10258	40
10259	230
10260	117
10261	27
10262	242
10263	149
10264	100
10265	201
10266	194
10267	209

Opinion Number	Page Number	
10268	10	
10269	203	
10270	230	
10271	204	
10272	214	
10273	28	
10274	3	
10275	175	
10276	134	
10277	201	
10278	243	
10279	175	
10280	204	
10281	179	
10282	192	
10283	156	
10284	134	
10285	205	
10286	10	
10287	156	
10289	157	
10290	73	
10291	71	
10292	117	
10293	28	
10294	163	
10295	135	
10296	186	
10297	251	
10298	5	
10299	117	
10300	167	
10301	243	
10302	54	
10303	163	
10304	214	(Note)
10305	225	
10306	40	
10307	117	
10308	214	
10309	192	
10310	28	
10311	29	
10312	118	
10313	29	
10314	40	
10315	84	
10316	193	
10317	84	
10318	11	
10319	195	
10320	61	
10321	167	
10322	201	
10323	251	
10324	61	
10325	225	
10326	5	
10327	243	
10328	197	
10329	69	
10330	262	
10331	163	(Note)
10332	186	
10333	163	
10334	95	
10335	95	
10336	261	
10337	173	
10338	40	
10339	176	
10340	29	
10341	251	
10342	11	
10343	246	
10344	176	
10345	263	
10346	247	
10347	173	
10348	157	
10349	69	
10350	168	
10351	74	
10352	30	
10353	135	
10354	118	
10355	216	
10356	261	
10357	157	
10358	30	
10359	201	
10360	41	(Note)
10361	71	
10362	84	
10363	263	
10364	168	
10365	135	
10366	41	
10367	30	
10368	31	
10369	31	
10370	302	
10371	31	
10372	158	
10373	54	
10374	118	

Opinion Number	Page Number
10375	302
10376	164
10377	31
10378	129
10379	118
10380	85
10381	252
10382	202
10383	101
10383 A	89 (Note)
10384	205
10385	169
10386	263
10387	158
10388	264
10389	74
10390	205
10391	187
10392	130
10393	6
10394	85
10395	85
10396	158
10397	303
10398	169
10399	159
10400	41
10401	258
10402	225
10403	69
10404	74
10405	71
10406	101
10407	247
10408	303
10409	206
10409 A	226
10410	264
10411	226
10412	303
10413	216
10414	217
10415	149
10416	76
10417	169
10418	32
10419	188
10420	42
10421	6
10422	226
10423	256
10424	137
10425	198
10426	6
10427	198
10428	230
10429	159
10430	164
10431	247
10432	170
10433	176
10434	159
10435	159
10436	61
10437	62
10438	101
10439	265
10440	252
10441	103
10442	6
10443	265
10444	90
10445	248
10446	176
10447	75
10448	206
10449	265
10450	55
10451	119
10452	266 (Note)
10453	57
10454	179
10455	57 (Note)
10456	266
10457	235
10458	170
10459	104
10460	191
10461	304
10462	150
10463	72
10464	72
10465	272
10466	227
10467	7
10468	229
10469	236
10470	256
10471	32
10472	44
10473	173
10474	264 (Note)
10475	266
10476	267
10477	57
10478	75

Opinion Number	Page Number
10479	137
10480	273
10481	137
10482	267
10483	62
10484	32
10485	95
10486	62
10487	32
10488	90
10488 A	77
10489	104
10490	273
10491	273 (Note)
10492	104
10493	257
10494	273
10495	138
10496	182
10497	174
10498	268
10500	33
10501	132
10502	138
10503	268
10504	268
10505	191
10506	7
10507	58
10508	44
10509	11
10510	160
10511	269
10512	193
10513	182
10514	269, 274
10515	249
10516	217
10517	7
10518	160
10519	236 (Note)
10520	236
10521	146
10522	238
10523	239 (Note)
10524	150
10525	8
10526	252
10527	239 (Note)
10528	146
10529	119
10530	119, 160
10531	274
10532	75
10533	64
10534	240
10535	76
10536	160
10537	120
10538	58
10539	170
10540	15
10541	8
10542	258
10543	120
10544	161
10545	304
10546	120
10547	44
10548	64
10549	64
10550	191
10551	33
10552	105
10553	304
10554	44
10555	146
10556	138
10556 A	132
10557	145
10558	121
10559	105
10560	33
10561	8, 262
10562	45
10563	150
10564	34
10565	121
10566	58 (Note)
10567	259
10568	300
10569	269
10570	45
10571	135
10572	90
10573	193
10574	300
10575	133
10576	270
10577	182
10578	48
10579	191
10580	240
10581	257
10582	77
10583	300

Opinion Number	Page Number
10584	105
10585	58
10586	49
10587	112
10588	133
10589	301
10590	255
10590 A	96
10591	161
10592	249
10593	145
10594	202
10595	174
10596	59
10597	301
10598	183
10599	49
10600	147
10601	34
10602	240
10603	9
10604	133
10605	262
10606	170
10607	121
10608	100
10609	107
10610	240
10611	16
10612	50
10613	177
10614	66
10615	301
10616	90
10617	122
10618	16
10619	183
10620	122
10621	16
10622	270
10623	50
10624	50
10625	59
10626	53
10627	171
10628	194
10629	105 (Note)
10630	171
10631	112
10632	129
10633	91
10634	270
10635	105 (Note)
10636	145
10637	220
10638	206
10639	34
10640	270
10641	107
10642	53, 107, 161, 177
10643	255
10644	192
10645	107
10646	162
10647	304
10648	270
10649	9
10650	59
10651	34
10652	98
10653	66 (Note)
10654	177
10655	98
10656	241
10657	171
10658	304
10659	162
10660	122
10661	16
10662	130
10663	37
10664	257
10665	107
10666	128
10667	301
10668	305
10669	150
10670	174
10671	111
10672	183
10673	66
10674	136
10675	136
10676	171
10677	258
10678	98
10679	59
10680	133
10681	259
10682	271
10683	184
10684	305
10685	72
10686	72
10687	162
10688	60

Opinion Number	Page Number
10689	98
10690	60
10691	207
10692	164
10693	177
10694	207
10695	207
10696	152
10697	271
10698	164
10699	242
10700	242
10701	259
10702	242
10703	68
10704	172
10705	249
10706	165
10707	184
10708	165
10709	249
10710	260 (Note)
10711	37
10712	255
10713	91
10714	194
10715	17
10716	60
10717	53
10718	70
10719	21
10720	260
10721	21
10722	172
10723	99
10724	60
10725	258 (Note)
10726	99
10727	271
10728	175
10729	100
10730	70

INDEX

(References are to opinion and page numbers)

A

	Opinion No.	Page No.
ACTION OVER		
Policemen's and Firemen's Death Benefit Fund act, Rights under,	10169	70
ADVERTISING		
Deceptive, "Police Journal 13-13" as,	10286	10
Definition of,	10319	195
Distribution ordinance, Validity of,	10193	194
Political pamphlets, Distribution of,	10319	195
	10427	198
AIRCRAFT		
Charges for flights,	10517	7
Electrical equipment in aircraft buildings, Inspection of,	10308	214
AIRPORTS		
See *Municipal Airport.*		
ALCOHOLICS		
Examination of,	10343	246
ALLEYS		
See *Streets and Alleys.*		
AMUSEMENTS AND AMUSEMENT PLACES		
See also *Licenses.*		
Bicycle races, Refund of license fee,	10430	164
Dancing in ice cream parlor, License for,	10518	160
Devices,		
"Anti-Aircraft Machine Gun," Prohibition of,	10556A	132
"Automatic Hostess," Prohibition of,	10365	135
Coin operated, Prohibition of,	10365	135
Talkie-movie machines, License for,	10591	161
Ice cream parlors, Dancing in,	10518	160
Talkie-movie machines, License for,	10591	161
ANIMALS		
Chickens, Keeping in city,	10295	135
Dogs, See *Dogs.*		
Goats, Keeping in city,	10295	135
ANNEXATION		
"Dry" district, Repeal of,	10479	137
Unincorporated territory, Procedure to annex,	10199	3

	Opinion No.	Page No.
ANNUITY AND BENEFIT FUNDS		
See *Board of Election Commissioners Employees' Annuity and Benefit Fund; Firemen's Annuity and Benefit Fund; Firemen's Pension Fund; House of Correction Employees' Pension Fund; Laborers and Retirement Board Employees' Annuity and Benefit Fund; Municipal Court and Law Department Employees' Annuity and Benefit Fund; Municipal Employees' Annuity and Benefit Fund; Policemen's Annuity and Benefit Fund; Policemen's and Firemen's Death Benefit Fund; Police Pension Fund.*		
APPROPRIATION ORDINANCE		
Amendment, Time for,	10325	225
Passage,		
Salaries pending,	10411	226
Status of employees pending,	10402	225
APPROPRIATIONS		
Autos privately owned, Maintenance of,	10471	32
Chicago Public Library, Amendments for,	10325	225
Contract, Purchases under extension of,	10439	265
Relief employees,	10373	54
Salaries of transferees to other department,	10411	226
Subway appropriation, Expense of studying tunnel project,	10468	229
ARBITRATION		
Future disputes, Validity of provision for,	10488	90
ARRESTS		
Appearance before complaint, Compelling of,	10489	104
Fugitive from justice,	10540	15
Health board employees, Power of,	10203	26
Notice, Issuance by board of health,	10273	28
Record, Destruction of,	10721	21
Statement of accused, Destruction of,	10207	9
ARTERIAL HIGHWAY		
Definition of,	10316	193
ASSIGNMENTS		
Corporations, Authority to execute for,	10235	262
Salary checks,	10483	62
ATTORNEYS' LIENS		
Fee, Withholding of,	10472	44
Notice, Necessity for filing of,	10580	240
Release of,	10270	230
Waiver by deceased attorney's estate,	10705	249

	Opinion No.	Page No.
AUCTIONS AND AUCTIONEERS		
Equipment sale on closed premises,	10571	135
"AUTOMATIC HOSTESS" MACHINE		
Prohibition of,	10365	135
B		
BAGATELLE		
Bowling table, Classification of,	10197	131
"Junior Bowling Alley," Prohibition of,	10604	133
BAIL BONDS		
Individual bonds, Release on,	10489	104
BAKERIES		
Retail chain stores, License for,	10289	157
BEACHES		
Lost property, Liability for,	10709	249
BEER		
Equipment, Demonstration in city-owned building,	10440	252
Garden, License for,	10495	138
Sale on city-owned premises,	10264	100
	10440	252
BICYCLE RACES		
License fee, Refund of,	10430	164
BILLBOARDS AND SIGNS		
Illuminated signs,		
Permit for,	10387	158
Plans, Approval of,	10387	158
Removal for delinquent inspection fees,	10562	45
BIRTHS		
Certificates,		
Charge for,	10551	33
County clerk, Copy to,	10313	29
Illegitimate child, Recording of parents' names,	10233	27
Seal on,	10484	32
Stillbirth, Copy to county clerk,	10313	29
Recording, Time of,	10601	34
Records,		
Inspection of,	10651	34
Inspection for publication uses,	10293	28
Reports,		
Affidavit, Signature on,	10371	31
Delayed report, Signature on,	10371	31

	Opinion No.	Page No.
BLACKOUTS		
Lights in stores,	10675	136
BLUE ISLAND RAILWAY COMPANY		
Right-of-way, Forfeiture of,	10192	203
BOARD OF APPEALS (ZONING)		
Building commissioner's decision, Reversal of,	10433	176
BOARD OF ELECTION COMMISSIONERS EMPLOYEES' ANNUITY AND BENEFIT FUND		
Age statement, Change of,	10488A	77
Annuity, Computation of,	10416	76
BOARD OF HEALTH		
See *Health, Board of*		
BONDS		
Investment of pension funds in,	10255	76
Special assessments, See *Bonds* under *Special Assessments*		
BOULEVARDS		
See also *Michigan Avenue.*		
Undertaking establishment, Location of,	10347	173
BOWLING		
"Junior Bowling Alley," Prohibition of,	10604	133
Portable table, Classification of,	10197	131
BRIDGES		
Railroads,		
Maintenance of,	10269	203
Removal, Permit for,	10694	207
Sanitary District, See *Bridges* under *Sanitary District.*		
Street car tracks, Relocation of,	10414	217
BROKERS		
Real estate, Revocation of license,	10530	160
BROOKFIELD, VILLAGE OF		
Bar permits, Prohibition on city leased property,	10264	100
BUILDINGS, DEPARTMENT OF		
See also *Buildings.*		
Police aid to,	10268	10

	Opinion No.	Page No.
BUILDINGS		
Business office, Capacity of,	10364	168
Clocks, Maintenance of,	10282	192
Code, Retroactive effect of,	10627	171
	10676	171
Dangerous, See *Unsafe* under *Buildings.*		
Defense housing, Standards for,	10704	172
Definition for frontage consent purposes,	10337	173
Demolition,		
Examination as precautionary measure, Compelling of,	10417	169
Insane owner, Procedure,	10606	170
Procedure for,	10321	167
Receiver for,	10398	169
Flammable liquids, Handling of,	10432	170
Frontage consents, See *Frontage Consents.*		
Garage, Classification of,	10337	173
House numbers, Placing of,	10300	167
Inspection,		
Charitable organizations,	10706	165
Compelling of,	10417	169
Fees, Payment by H.O.L.C.,	10226	91
Kitchenette apartments, Regulation of,	10326	5
Lights on porches,	10539	170
Lot requirements, Legality of,	10458	170
Nuisance,		
Abating when owner insane,	10606	170
Demolition of,	10385	169
Use as constituting,	10722	172
Offices, Capacity of,	10364	168
Party wall, Frontage consent status of building,	10337	173
Permit revocation, Damages from,	10279	175
Permits during national emergency,	10630	171
Plumbing,		
Defense housing, Standards for,	10704	172
Police aid to department,	10268	10
Rooms, Determination of capacity,	10364	168
Single dwellings, Exit lighting,	10184	166
Stairwells in existing buildings,	10676	171
Uncompleted buildings, Abatement of,	10204	166
United States, See *Buildings* under *United States.*		
Unsafe,		
Abatement of,	10321	167
Demolition, Procedure for,	10321	167
	10385	169
	10657	171
Repairing of,	10385	169
Shoring-up of,	10385	169
Unsightly, Status of,	10204	166
	10350	168
Walls, Painting of unsightly,	10350	168
Wrecking permit fees, Exemption of Housing Authority,	10362	84

	Opinion No.	Page No.
BUILDINGS, COMMISSIONER OF		
Illuminated signs, Approval of plans,	10387	158
Zoning conformity decision, Reversal of,	10433	176
BUILDINGS, DEPARTMENT OF		
Entry on private property, Compelling of,	10417	169
Police aid to,	10268	10
BURGLAR ALARM		
Tear gas device, License for,	10170	154
BURIALS		
See *Burials* under *Health, Board of.*		
C		
CALUMET LAKE AND RIVER		
Title to underlying lands,	10584	105
CALUMET PARK, VILLAGE OF		
Sewer construction, Liability for damage by,	10438	101
CARNIVALS		
City property, Use of,	10643	255
CEMETERY		
Casket, Return to undertaker,	10250	134
Clothes of deceased, Removal of,	10250	134
CHARITABLE INSTITUTIONS AND ORGANIZATIONS		
Inspection fees, Exemption from,	10435	159
	10706	165
Play lot operation, Organization for,	10327	243
Water charges, Exemption from,	10366	41
CHECKS		
Deceased employee's,	10225	39
Endorsement to another official,	10311	29
CHICAGO AND WESTERN INDIANA RAILROAD		
Track relocation, Salvage from,	10448	206
CHICAGO HOUSING AUTHORITY		
Building wrecking fees, Exemption from,	10362	84
Coal, Purchase of,	10188	80
Condemnation,		
Excess condemnation, Power of,	10254	81
Sale of excess land,	10254	81

	Opinion No.	Page No.
CHICAGO HOUSING AUTHORITY—Continued		
Contracts,		
Arbitration clause in,	10488	90
Coal purchases for project,	10188	80
Liability on,	10315	84
Employees,		
Negligence, Liability for,	10315	84
Social Security act, Exemption from,	10245	80
Illinois municipal budget law, Applicability of,	10633	91
Loan from city, Waiver of interest on,	10177A	78
Option to buy city land,	10242	80
Projects,		
Apartment, Furniture left by tenant,	10380	85
Designation of location,	10444	90
Permit and inspection services, Charges for,	10572	90
Permit for sidewalk construction,	10180	208
Service charges, Computation of,	10444	90
Service charges in lieu of taxes,	10713	91
Site, City's consent for,	10394	85
Tenants,		
Abandonment of premises by,	10380	85
Eligibility of,	10395	85
Furniture left by,	10380	85
Relief recipients, Eligibility of,	10395	85
Purchase of city land,	10242	80
Reports, Requirement for,	10394	85
Service charges in lieu of taxes, Collection and distribution of,	10713	91
Shelter rentals, Payment of,	10187	78
Streets vacated by city, Reversionary interest in,	10317	84
Taxes, Payments in lieu of,	10187	78
	10444	90
	10713	91
Vacation of street, Removal of improvements,	10616	90
CHICAGO PARK DISTRICT		
47th street, Jurisdiction over,	10441	103
Michigan avenue,		
Jurisdiction over,	10383	101
Maintenance of,	10492	104
Viaduct, Repair of,	10459	104
Tax delinquent property, Possession of,	10305	225
Transfer of street for park purposes,	10174	185
CHICAGO PLAN COMMISSION		
Disbursement of monies from publication sales,	10257	39
Housing project site, Consultation on,	10394	85
Publications, Sale of,	10257	39
Status of,	10420	42

	Opinion No.	Page No.
CHICAGO PUBLIC LIBRARY		
Appropriation ordinance, Amendment of,	10325	225
Assistant librarian, Civil service status of,	10214	38
City property, Use of,	10590	255
Directors, Bonds for,	10219	38
Librarian, Civil service status of,	10214	38
Secretary, Civil service status of,	10214	38
CHICAGO RAPID TRANSIT COMPANY		
Compensation to city, Determination of,	10267	209
Transfers, Apportionment from,	10267	209
CHICAGO RECREATION COMMISSION		
Community fund, Custody of,	10175	38
Play lots, Liability for injuries at,	10327	243
Status of,	10175	38
CHICAGO RELIEF ADMINISTRATION		
Employables, Listing of,	10598	183
Employees, Leave of absence for,	10625	59
Furniture and equipment, Disposition of,	10577	182
Status of,	10373	54
Waste material sold by House of Correction, Credit for,	10602	240
CHICAGO RIVER		
Dumping, Prohibition of,	10353	135
CHICAGO SERVICE MEN'S CENTER		
Donations from Thrill Show,	10702	242
Donations to, Status for income tax purposes,	10729	100
CHICAGO SURFACE LINES		
Tracks, Relocation of,	10413	216
	10414	217
CHICAGO TUNNEL COMPANY		
Restoration of tunnel, Reimbursement for,	10231	208
CHICAGO UNION STATION COMPANY		
Rights in Congress street,	10185	272
CHIROPRACTORS		
X-ray laboratory, Operation of,	10348	157
CHRISTMAS TREES		
Sale, Licensing of,	10372	158
CICERO AVENUE		
Control over,	10309	192

	Opinion No.	Page No.
CIGARETTES AND CIGARETTE DEALERS		
License,		
City's power to,	10467	7
Department store, Number required,	10434	159
Fee, Refund of,	10303	163
	10333	163
Several locations, Requirements for,	10434	159
CIGAR STORES		
Liquor sales in, Hours for,	10593	145
CITY CLERK		
Fish and game license fees, Ownership of,	10428	230
Special assessments, Information to bondholders,	10553	304
CITY COMPTROLLER		
Appropriations, Power to amend estimates,	10325	225
Checks of deceased employee,	10225	39
Deputy comptroller, Signature of,	10306	40
Housing Authority agreement, Making of,	10187	78
Judgment monies, Withholding attorneys' fees on,	10472	44
Lease of airplane hangar space,	10194	250
	10216	250
Private debt, Aid in collection of,	10258	40
Salaries, Payment after deductions,	10324	61
Special assessment bonds, See *Bonds* under *Special Assessments.*		
CITY COUNCIL		
Aircraft, Power to determine flight charges,	10517	7
Annexation of unincorporated territory,	10199	3
Appropriation ordinance, Amendment of,	10325	225
Board of health, Rules for meetings of,	10358	30
City property, Power to donate,	10506	7
Cold storage warehouse, Power to license,	10544	161
Committee on housing, Powers of,	10326	5
Contracts,		
Extension of,	10439	265
	10443	265
Extras, Authorization of,	10482	267
Daylight saving time, Extension of,	10442	6
Driver's test, Control over,	10265	201
Driveway permits,		
Issuance of,	10309	192
Revocation of,	10202	155
Employees in armed forces, Provision for,	10373	54
Fire service outside city limits, Charges for,	10525	8
Garage attendants, Requirement of,	10382	202
Leases,		
Airplane hangar space,	10194	250
	10216	250
Dock facilities,	10196	250

	Opinion No.	Page No.
CITY COUNCIL—Continued		
Loans, Waiver of interest on,	10177A	78
Milk regulations, Enactment of,	10206	26
Nuisances, Declaration of,	10321	167
Pedestrian traffic, Power to regulate,	10322	201
Railroads, Requirement of headlight dimmers,	10280	204
Relief plumbers, Certificates for,	10281	179
Rentals of private property, Control of,	10326	5
Statute of limitations, Waiver of,	10445	248
Water, Sale to non-residents,	10493	257
CITY FUNDS		
Division between two improvements,	10574	300
Idle funds, Repayment of advances from,	10454	179
Interest on,	10699	242
Lien of sub-contractor against,	10592	249
Motor fuel tax fund, Advance for private use,	10597	301
Relief funds, Custody of,	10513	182
Special assessments, See *Special Assessments.*		
Special deposits, Use of,	10610	240
Traction fund, See *Traction Fund.*		
CITY PROPERTY		
Airport, Sub-lease by lessee,	10526	252
Alcoholic liquors, Sale of,	10264	100
	10440	252
Beer cooling equipment, Demonstration of,	10440	252
Carnival site, Use for,	10643	255
Chicago Public Library, Use by,	10590	255
Condemned property, See *Condemnation.*		
Damage, Impounding of automobiles for,	10425	198
Donation of,	10506	7
Leasing of, See *Leases (City).*		
Mechanics' lien act, Application of,	10592	249
Pumping station, Ownership of,	10470	256
Sale,		
Judgments against city as part payment,	10323	251
Method of,	10561	8
Option to Chicago Housing Authority,	10242	80
Tax delinquent property, Possession of,	10305	225
CITY PUBLICATIONS		
Sale, Agency for,	10257	39
CITY TREASURER		
Relief monies, Custody of,	10513	182
CIVILIAN DEFENSE		
Liability of companies participating in,	10637	220

	Opinion No.	Page No.
CIVIL SERVICE		
Applications, Citizenship averment in,	10679	59
Appointment of selective service registrant,	10450	55
Chicago Public Library, Employees of,	10214	38
Chicago Relief Administration, Employees of,	10625	59
Citizenship of applicant,	10679	59
Discharge,		
Citizenship, Misrepresentation as to,	10679	59
Salary deductions for annuities during illegal,	10447	75
Eligibility list, Citizenship as affecting status on,	10679	59
Examination, Fees for,	10547	44
Field nurses, Classification of,	10477	57
Leave of absence,		
Military service,	10718	70
Reasons for,	10690	60
Library employees, Status of,	10214	38
Military service, Rights when in,	10538	58
Resignation,		
Telegram as,	10596	59
Withdrawal of,	10453	57
	10716	60
Salaries, See *Salaries.*		
Selective service registrants, Status of,	10450	55
Seniority rights, during military service,	10373	54
Sick leave, Regulation of,	10688	60
Temporary appointees,		
Citizenship of,	10724	60
Field nurses as,	10477	57
Temporary transfer between departments, Pension deductions during,	10730	70
Vacation periods, Right to,	10486	62
CIVIL SERVICE COMMISSION		
Charges,		
Second charges after reinstatement,	10507	58
Reassignment, Delay in,	10650	59
Reinstatement,		
Power of,	10585	58
Second charges after,	10507	58
Review of findings,	10585	58
CLAIMS AGAINST CITY		
Permit revocation, Damages from,	10279	175
Statute of limitations, Waiver of,	10445	248
CLAIMS OF CITY		
Damage to city property,		
Impounding of vehicle for,	10425	198
Submarine cable,	10346	247
CLOCKS ON BUILDINGS		
Removal by city,	10282	192

	Opinion No.	Page No.
CLOSING OUT SALES		
License for,	10191	155
CLUBS		
Liquor sales, Zoning regulations,	10502	138
COAL		
Contract price, Effect of federal regulations on,	10388	264
Marketing rules and regulations,		
Effect on city purchases,	10634	270
Effect on reserve,	10640	270
Mine name and location, Information from railroad,	10230	203
Price increase, Refund of,	10330	262
COIN OPERATED MACHINES		
"Anti-Aircraft Machine Gun," Prohibition of,	10556A	132
"Automatic Hostess," Prohibition of,	10365	135
Milk dispensers, License for,	10256	116
COLD STORAGE PLANTS AND WAREHOUSES		
License, Power to,	10544	161
COMMONWEALTH EDISON COMPANY		
Sidewalk construction, Permit for,	10180	208
CONDEMNATION		
Compensation for improvements,	10568	300
Easement under right-of-way, Shoring expenses for,	10409	206
Excess condemnation, Power of Housing Authority,	10254	81
Leasing of condemned property,	10712	255
Use of property for temporary leasing,	10712	255
CONGRESS STREET		
Plans, Modification of,	10185	272
CONSTITUTION		
Free speech, Scope of,	10328	197
CONTAGIOUS DISEASE HOSPITAL		
Admission to, Court order for,	10487	32
Venereal disease, Committing defendants for,	10487	32
CONTRACTORS		
See also *Contracts.*		
Private property, Easement in,	10583	300
Public improvements, Prevailing wage law, Effect of,	10533	64
Public work projects, Prevailing wage provisions,	10356	261

	Opinion No.	Page No.
CONTRACTORS—Continued		
Retailers' occupation tax,		
Specialized contractors, Liability of,	10701	259
Subway equipment, Sale of,	10720	260
Specialized contractors, Reailers' occupation tax, Liability of,	10701	259
Specifications, Compliance with,	10345	263
Tunnel service, Liability for loss of,	10504	268
Workmen's compensation liability, Security for,	10697	271
CONTRACTS		
See also *Contractors.*		
Additional work,		
Payment for,	10386	263
	10456	266
Ratification of,	10514	269
Arbitration clause, Legality of,	10488	90
Bids,		
Delay in rejection of,	10475	266
Deposit, Recovery of,	10561	262
Lowest bidder, Determination of,	10336	261
Specifications, Variance from,	10386	263
Withdrawal of,	10605	262
Bond of indemnity,	10569	269
Chicago Housing Authority, Liability of,	10315	84
Coal,		
Freight charges, Tax on,	10727	271
Marketing rules and regulations,		
Effect on contract price,	10388	264
	10634	270
Effect on reserve,	10640	270
Price, Adjustment of,	10388	264
Refund of invalid increases,	10330	262
Delays, Compensation when city's fault,	10449	265
Delivery by consignor, Liability for theft,	10363	263
Delivery, Method of,	10498	268
Excise tax on subway purchases,	10681	259
Extension, Continuation after fiscal year,	10439	265
	10443	265
Extras,		
Compensation for,	10456	266
	10482	267
Liability when caused by specifications,	10345	263
Ratification of,	10514	269
Federal excise tax on city purchases,	10542	258
Freight charges,		
Federal tax on, City liability for,	10727	271
Retailers' occupation tax on,	10720	260
Interpretation of,	10503	268
	10511	269
Loss, Effect of delivery on,	10363	263
Maintenance bond, Waiver of,	10576	270

	Opinion No.	Page No.
CONTRACTS—Continued		
Marketing rules and regulations, Effect of,	10388	264
	10648	270
Omitted work, Payment for,	10476	267
Partial contract under unit authorization,	10234	251
Prevailing wage provision, Legality of,	10356	261
Price, Effect of increase of market price,	10498	268
Printing, Requirements of contract for,	10622	270
Real estate, Purchase of part of tract,	10234	251
Reserve clause,		
Interest accrual under,	10640	270
Necessity for,	10569	269
Retailers' occupation tax,		
Determination of,	10336	261
Freight charges, Tax on,	10720	260
Specialized contractor, Liability of,	10701	259
Subway equipment,	10701	259
	10720	260
Signature requirements on,	10569	269
Subway, See *Contracts* under *Subways.*		
Termination, Work performed after,	10475	266
Workmen's compensation liability, Security for,	10697	271
CORONER		
See *Coroner* under *County of Cook.*		
CORPORATION COUNSEL		
Appeals, Costs of,	10624	50
Defense of city employees,	10508	44
Defense of former city official,	10578	48
Lease of airplane hangar space, Approval of,	10216	250
Status of,	10400	41
COUNTY OF COOK		
Clerk, Right to birth and death records,	10313	29
Collector, Withholding of tax monies,	10466	227
Coroner,		
Property of decedents, Custody of,	10715	17
Search of premises of decedents,	10715	17
Elections, Sharing of expenses of,	10466	227
House of Correction—County jail wall, Repair of,	10645	107
CRIMES AND CRIMINALS		
See also *Records* under *Police, Department of.*		
Misrepresentation of foods,	10248	116

	Opinion No.	Page No.
D		
DAIRIES		
See *Milk and Milk Products.*		
DANCING		
Ice cream parlor, License for,	10518	160
DAYLIGHT SAVING TIME		
Extension of period, Authority for,	10442	6
DEAD BODIES		
See *Burials* under *Health, Board of.*		
DEATH		
Certificates,		
Copy to county clerk,	10313	29
Seal on,	10484	32
Records, Inspection for publication,	10293	28
DEBT OF CITY		
Set off, Use of,	10515	249
DEBT (PRIVATE)		
Aid in collection of,	10258	40
DEDICATION OF STREETS AND ALLEYS		
Agreement between private parties, Effect of,	10505	191
Common law dedication, Duties when,	10296	186
Park projects, Transfer for,	10174	185
Revocation of offer, Requisites of,	10644	192
Surface space, Use by city,	10391	187
Tax delinquent land, Acceptance of,	10422	226
Utilities, Installation of,	10419	188
DEPOSITARIES FOR CITY		
Bids,		
Average daily balances, Interest on,	10699	242
Demand deposits, Interest on,	10699	242
Deposits, Demand deposits, Interest on,	10699	242
DISEASES		
Communicable, Casket and clothes of decedent,	10250	134
Tuberculosis cases, Forced removal to hospital,	10367	30
Venereal, Treatment of minors,	10261	27
DOGS		
Biting dogs, Impounding of,	10273	28

	Opinion No.	Page No.
DRAFTEES		
See *Selective Service Registrants* under *Military Service.*		
DRIVEWAYS		
Council order,	10309	192
Permit,		
Revocation of,	10202	155
Use by new owner,	10536	160
DUMPING		
Restrictions on,	10353	135
DWELLINGS		
See *Buildings.*		
E		
EASEMENTS		
Modification of,	10185	272
Sewer under right-of-way,	10409	206
Temporary easement, Termination of,	10583	300
Waterway, Easement to U. S. for,	10485	95
ELECTION COMMISSIONERS, BOARD OF		
Pamphlets, Cost for mailing,	10559	105
ELECTIONS		
Expenses, Sharing of,	10466	227
Pamphlets, Cost for mailing,	10559	105
ELECTRIC CURRENT AND EQUIPMENT		
Inspection, Airline office equipment,	10308	214
Signs, See *Illuminated Signs* under *Billboards and Signs.*		
ELEVATED RAILWAYS		
Columns, Removal of,	10695	207
EMPLOYEES OF CITY		
Appropriation ordinance, Employment pending passage of,	10402	225
Board of health, Personal liability of members,	10560	33
Chicago Relief Administration, Status of,	10625	59
Citizenship, Requirement of,	10679	59
Decedent, Pay check belonging to,	10225	39
Defense by corporation counsel,	10508	44
Emergency work by regular employees,	10548	64
Federal income tax, Lien for,	10549	64
Federal tax on transportation,	10567	259

	Opinion No.	Page No.
EMPLOYEES OF CITY—Continued		
Leave of absence,		
Defense work,	10690	60
Military service,	10718	70
Mentally ill, Resignation of,	10403	69
Military service,		
Pension deductions,	10718	70
Rights when in,	10373	54
	10538	58
Overtime compensation, Right to,	10437	62
Painters, Salaries of,	10614	66
	10673	66
Power of attorney, Revocation of,	10436	61
Prevailing wage law, Effect of,	10533	64
	10673	66
Salaries, See *Salaries.*		
Sick leave, Regulation of,	10688	60
Temporary, Citizenship of,	10724	60
Temporary transfer between departments, Pension deductions during,	10730	70
Transportation expenses, Right to,	10471	32
Vacation period, Right to,	10486	62
EMPLOYMENT AGENCIES (PRIVATE)		
Regulation of,	10429	159
EXIT LIGHTING		
Single dwellings, Requirements for,	10184	166
EXPLOSIVES		
Police department, Federal license to transport,	10652	98
F		
FARMERS		
Peddlers, License for,	10287	156
FEDERAL WORKS ADMINISTRATION		
Loans to Medical Center Commission,	10642	107
FEES		
Birth certificates,	10551	33
Civil service examinations,	10547	44
Fish and game license fees,	10428	230
FILLING STATIONS		
License,		
Airline company selling gasoline, Fee,	10510	160

	Opinion No.	Page No.
FIRE DEPARTMENT		
Service outside city, Charges for,	10525	8
Thrill show, Proceeds, Donation of,	10702	242
FIREMEN'S ANNUITY AND BENEFIT FUND		
Parents' annuity, Reinstatement after resignation, Effect of,	10686	72
Pensioner, Service credits to,	10463	72
Prior service,		
Credit from Firemen's Pension Fund,	10685	72
Deductions for, Mistake in,	10685	72
Reinstatement after resignation, Effect of,	10686	72
Resignation and reinstatement, Effect of,	10686	72
Salary deductions,		
Mistake in,	10685	72
Prior service, Credit for,	10685	72
Refund of,	10464	72
Refund, Wife of discharged fireman,	10361	71
Retirement, Payment for period of unlawful,	10324	61
Widow's annuity,		
Refund of,	10291	71
	10464	72
Reinstatement after resignation, Effect of,	10686	72
Service credits, Rights during pension period,	10463	72
FIREMEN'S PENSION FUND		
Salary deductions, Transfer to Firemen's Annuity and Benefit Fund,	10685	72
Service credit, Transfer to Firemen's Annuity and Benefit Fund,	10685	72
FIRE SALES		
License, Period of,	10687	162
FISHING		
License fees, Ownership of,	10428	230
FLAMMABLE LIQUIDS AND MATERIALS		
Building, Fire resistive requirements for,	10432	170
Storage, Licensing of,	10399	159
Tanks, Safety clearance for,	10276	134
FOOD ESTABLISHMENTS AND SALES		
Bakeries, Retail chain store license for,	10289	157
Dancing, Licensing of,	10518	160
Distributing plant, Classification of,	10451	119
Ice cream parlors, Dancing in,	10518	160
Liquor sales, Zoning regulations,	10502	138
Smoking, Accomodations for,	10543	120

	Opinion No.	Page No.
FOOD ESTABLISHMENTS AND SALES—Continued		
Foods,		
Dog food, Manufacture at uninspected plants,	10546	120
Horse meat, Sale of,	10617	122
Inspection beyond city limits,	10660	122
Meat products, See *Meats and Poultry.*		
Milk, See *Milk and Milk Products.*		
Pool buying to fix prices,	10530	119
Storage to create scarcity,	10530	119
Vegetable oils, Capacity of storage tanks,	10654	177
Wholesale, Commissaries for retail sales,	10283	156
FOREIGN FIRE INSURANCE COMPANIES		
Re-insurance companies, Levy on,	10189	224
FORTUNE TELLING		
Restaurants, Prohibition in,	10680	133
47TH STREET		
Jurisdiction over,	10441	103
FRATERNITIES		
Milk, Containers for dispensing of,	10251	116
FRAUDULENT SALES ACT		
Closing out sales, Number allowed,	10191	155
"FRIZZ"		
Labeling containers of,	10307	117
FRONTAGE CONSENTS		
Agent, Authority of,	10497	174
Buildings, Definition of,	10337	173
Change in use,	10247	173
	10670	174
Corporations, Signing for,	10497	174
Liquor sales in clubs, restaurants, etc.,	10502	138
Ownership change, Effect of,	10247	173
Parking lot, Private,	10595	174
Signature by agent, Authority for,	10497	174
Trailer camp,	10473	173
Undertaking establishment, See *Undertakers and Undertaking Establishments.*		

	Opinion No.	Page No.
G		
GAMBLING		
"Anti-Aircraft Machine Gun"	10556A	132
"Hollywood Movie Quiz"	10501	132
National emergency as affecting,	10588	133
Pin games, "Junior Bowling Alley" as,	10604	133
"The Ghost Walks,"	10575	133
GAME LICENSES		
Fees, Ownership of,	10428	230
GARAGES		
Attendants at driveways, Requirement of,	10382	202
Basement,		
Classification as,	10177	166
Sprinklers for,	10177	166
Building, Definition as,	10337	173
Liability for automobiles and contents,	10274	3
Roadway surface, Use of,	10573	193
GASOLINE TANKS		
Airline companies, License fees for resale tanks,	10510	160
H		
HANDBILLS		
"Advertising matter," Interpretation of,	10319	195
Distribution,		
Manner of,	10266	194
Ordinance, Validity of,	10193	194
Political, social or economic pamphlets,	10319	195
	10427	198
HEALTH, BOARD OF		
Advisory committee, Power to appoint,	10369	31
Animals, Regulation of,	10295	135
Arrest notices, Issuance of,	10273	28
Arrest, Power of,	10203	26
Births,		
Certificates, Copy to county clerk,	10313	29
Records,		
Public inspection of,	10293	28
	10651	34
Illegitimate child, Recording parents, names of,	10233	27
Building certificates, Signing of,	10205	26
Burials,		
Casket and clothes of decedent,	10250	134
Out-of-city bodies,	10252	145
Permits, Amputated human members,	10663	37
Butter cream, Approval of,	10208	114
Canned meat products, Inspection of,	10354	118
Cemetery, Restrictions on,	10250	134

	Opinion No.	Page No.
HEALTH, BOARD OF—Continued		
Contagious disease, Removal to hospital for,	10367	30
Death certificates, Copy to county clerk,	10313	29
Dogs, Impounding of,	10273	28
Drainage, Jurisdiction over,	10340	29
Ice cream,		
Frozen cream in,	10220	115
Mix, Approval of Distribution of,	10217	114
Inspectors,		
Autos privately owned, Maintenance of,	10471	32
Deputizing to revoke permits,	10500	33
Live poultry establishments, Abatement of,	10284	134
Liquor stores, Sanitary requirements,	10632	129
Meats, See *Meats and Poultry.*		
Meetings,		
Minutes of,	10358	30
Rules for,	10358	30
Voting at,	10368	31
Members, Personal liability of,	10560	33
Milk, See *Milk and Milk Products.*		
Minors,		
Consent for treatment of,	10261	27
	10564	34
Packaging equipment for milk products,	10607	121
Payrolls of transferees,	10411	226
President, Endorsement of checks,	10311	29
Records, Granting access to,	10293	28
Resolution, Publication of,	10418	32
Rules and regulations,		
Limitation of,	10352	30
Power to prescribe,	10206	26
Statute, Compatability with,	10236	27
Seal, Legality of,	10484	32
State public health laboratory, Jurisdiction over,	10641	107
State regulations,		
Adoption of amendment,	10377	31
Violations, Duty to report,	10310	28
Stillbirth certificates, Copy to county clerk,	10313	29
Subways, Jurisdiction over,	10340	29
Transfer of duties,	10717	53
Tuberculosis "open cases," Hospitalization of,	10367	30
Undertakers (out-of-town), Control over,	10252	145
Venereal diseases, Treatment of minors for,	10261	27
"Yami Yogurt," Distribution of,	10292	117
HEATING		
Ordinance, O.P.A. regulations as affecting,	10726	99
HOME OWNERS' LOAN CORPORATION		
Building inspection fees, Liability for,	10226	91
HOMES		
Frontage consents, Change in ownership,	10247	173

	Opinion No.	Page No.
HOSPITALS		
Cooling system for,	10249	167
Ventilation, Requirements for,	10249	167
Water charges, Exemption from,	10366	41
HOUSE NUMBERS		
Erection by city,	10300	167
HOUSE OF CORRECTION		
Mittimi, Interpretation of,	10554	44
Prisoners, Incarceration on several mittimi,	10554	44
Sale of property of Chicago Relief Administration,	10602	240
Wall, Repair of,	10645	107
HOUSE OF CORRECTION EMPLOYEES' PENSION FUND		
Funds, Investment of,	10255	76
Salary deductions, Refund of,	10224	76
HOUSING		
See also *Buildings; Chicago Housing Authority.*		
Committee of council, Powers of,	10326	5
Lot requirements, Legality of,	10458	170
HOUSING BOARD OF APPEALS		
Creation of,	10717	53
HOUSING BOARD OF INSPECTION		
Creation of,	10717	53
I		
ICE CREAM		
Concentrates, Use of,	10243	116
Converted milk products, Use of,	10243	116
Cream (frozen), Use of,	10220	115
	10241	115
Milk concentrates, Use of,	10243	116
Mix,		
Containers, Labeling of,	10307	117
Distribution, Approval of,	10217	114
Retail sales, License for,	10283	156
Storage place, License for resale,	10283	156
Vendors on public ways, License for,	10283	156
ICE CREAM PARLORS		
Dancing, License for,	10518	160
ILLINOIS AND MICHIGAN CANAL		
Filling in for highway,	10531	274

	Opinion No.	Page No.
ILLINOIS COMMERCE COMMISSION		
Railroads,		
Easement for city sewer,	10409	206
Jurisdiction over headlight dimmers,	10280	204
Roosevelt road viaduct, Repairs to,	10691	207
Viaduct repair, Allocating expense of,	10384	205
	10691	207
ILLINOIS LIQUOR CONTROL COMMISSION		
Jurisdiction over bar outside city,	10264	100
ILLINOIS MUNICIPAL BUDGET LAW		
Chicago Housing Authority, Status of,	10633	91
INCOME TAX		
See *Income Tax* under *United States.*		
INDUSTRIES COMMUNICATIONS FUND		
Administration of,	10700	242
INJUNCTION		
Ordinance enforcement, Scope of restraining order,	10379	118
INSANE PERSONS		
Building owned by, Demolition of,	10606	170
Monies held by police custodian, Disposition of,	10318	11
Resignation of employee mentally ill,	10403	69
INSPECTIONS		
Armament plant financed by government,	10608	100
Billboards and signs, Fees delinquent,	10562	45
Fees,		
Charitable organization, Exemption from,	10435	159
	10706	165
Chicago Housing Authority, Exemption from,	10572	90
Lien for,	10603	9
Mechanical ventilation equipment,	10435	159
Mechanical ventilation,	10435	159
Milk from out of city,	10711	37
Milk from out of state,	10639	34
Scales, Union Stock Yards,	10570	45
Slaughter house outside city limits,	10660	122
Tires on motor vehicles,	10594	202
INSURANCE		
Tax on reinsurance companies,	10189	224
INTEREST		
Depositaries, Bids of,	10699	242
Loan of city, Waiver on,	10177A	78
Special assessments, Waiver on,	10461	304
ITINERANT MERCHANTS		
Christmas trees, Licensing sale of,	10372	158

	Opinion No.	Page No.
J		
JUDGMENTS		
Attorney's fees, Withholding of,	10472	44
Payment,		
Order of entry,	10262	242
Priority date for,	10278	243
Private, Aid in collection of,	10258	40
Public benefit judgments, Payment of,	10278	243
Use in payment for city property,	10323	251
K		
KNIVES		
Concealed, Carrying of,	10392	130
L		
LABORERS AND RETIREMENT BOARD EMPLOYEES' ANNUITY AND BENEFIT FUND		
Membership, Layoff and delay affecting,	10650	59
LAKE MICHIGAN		
Diversion of,	10590A	96
Reclaimed land, Zoning of,	10344	176
LANDLORD AND TENANT		
Furniture, Removal of,	10380	85
Rentals, Control over,	10326	5
LAW, DEPARTMENT OF		
City employees', Defense of,	10508	44
Corporation counsel, Status of,	10400	41
LEASES (CITY)		
Airplane hangar space,	10194	250
	10216	250
Alcoholic liquor, Demonstration of equipment,	10440	252
Amendment, Authorization of,	10297	251
Assignment restriction,	10381	252
Condemned property, Lease of,	10712	255
Dock facilities on Navy Pier,	10196	250
Liquor bar permits, Issuance of,	10264	100
Modification, Authorization of,	10297	251
Mortgage of leasehold, Consent to,	10194	250
Navy Pier, Dock facilities on,	10196	250
Occupancy by parent corporation of lessee,	10381	252
Taxes on leasehold estate,	10401	258
Term of lease,	10196	250
	10216	250

	Opinion No.	Page No.
LIABILITY OF CITY		
Alley vacation, Loss of outlet,	10460	191
Barricading of dangerous street,	10512	193
Bathing beach, Property lost at,	10709	249
Blasting, Damage from,	10301	243
Bridges,		
Sanitary District,		
Repair by,	10552	105
	10665	107
Warning signals,	10671	111
Condemnation proceedings, Improvements prior to,	10568	300
Contracts,		
Freight charges, Tax on,	10727	271
Excise tax on subway equipment,	10681	259
Federal excise tax,	10542	258
Federal tax on freight charges, Obligation for,	10727	271
House of Correction wall, Repair of,	10645	107
Ice and snow, Accumulation on street,	10628	194
Legal services for former official,	10578	48
Obstruction of private property,	10494	273
	10667	301
O. P. M. regulations, Effect of,	10587	112
Play lots, Injuries at,	10327	243
Private property, Easement in,	10583	300
Public improvements, Obstruction of private property by,	10494	273
	10667	301
Public utilities, Relocating equipment, Cost of,	10355	216
Sanitary district,		
Bridges,		
Obligation to repair,	10552	105
	10665	107
Warning signals on,	10671	111
Set off, Use of,	10515	249
Sewer construction, Drying up wells by,	10438	101
Sidewalk supports and retaining walls, Repair of,	10589	301
State highways, Injuries on,	10407	247
Thefts, Effect of delivery to consignee,	10363	263
W. P. A. workers at tuberculosis sanitarium	10431	247
LICENSES		
Air rifles, Sale of,	10662	130
Application, Publication costs, Refund of,	10376	164
Bakeries, Retail chain stores,	10289	157
Christmas trees, Sale of,	10372	158
Cigarette dealers, See *Cigarettes and Cigarette Dealers.*		
Closing out sales,	10191	155
Cold storage warehouses,	10544	161
Corporation, Issuance when name changed,	10229	155
Dancing in ice cream parlor,	10518	160
Denial, Refund upon,	10333	163
Driver's license, Issuance to convicted person,	10195	148

	Opinion No.	Page No.
LICENSES—Continued		
Employment agencies (private), Power over,	10429	159
Fees,		
Fish and game license fees,	10428	230
Refund or rebate of,		
Bicycle races, Status of,	10430	164
Government acquisition of property,	10692	164
Invalid ordinance, Payment under,	10708	165
Non-use of license,	10303	163
Ordinance repealed, Rights after,	10294	163
	10430	164
Unused period,	10333	163
	10376	164
Fire sale, Period of,	10687	162
Flammable liquids, Storage of,	10399	159
Food establishment (wholesale), Classification of resident distributing plant,	10451	119
Ice cream,		
Peddlers,	10283	156
Storage place,	10283	156
Ice cream parlor, Dancing in,	10518	160
Liquor, See *License* under *Liquor and Liquor Dealers.*		
Milk vending devices,	10256	116
Military service as affecting renewal of,	10636	145
Motor vehicle parts dealer, Power over,	10186	154
Motor vehicles, See *Licensing by City* under *Motor Vehicles.*		
Number required for department store,	10434	159
Parking lot,	10642	161
Peddler's license for farmer,	10287	156
Real estate broker, Revocation,	10530	160
Reproduction on advertisement of sale,	10659	162
Shoe polish, Sale of,	10173	154
State,		
Fish and game license fees, Ownership of,	10428	230
Talkie-movie machine,	10591	161
Taxicab license, Assignment of,	10181	147
Tear gas burglar alarm,	10170	154
Undertakers, See *Undertakers and Undertaking Establishments.*		
LIENS		
Attorneys' liens, See *Attorneys' Liens.*		
Inspection services, Lien for fees,	10603	9
Special assessment lien, Compromise of,	10545	304
LIQUOR AND LIQUOR DEALERS		
Churches, Distance requirements for restaurants, etc., selling liquor,	10502	138
Cigar store selling liquor, Hours for,	10593	145
City leased premises, Bar permits, Issuance of,	10264	100

	Opinion No.	Page No.
LIQUOR AND LIQUOR DEALERS—Continued		
Dealers,		
Distributor furnishing movies to retailers,	10210	128
	10211	128
Toilet facilities, Requirement of,	10172	128
Dry districts,		
Liquor manufacturing in,	10253	129
Repeal of,	10479	137
Legality of business,	10424	137
License,		
Denial, Power over,	10481	137
Fee, Refund of,	10333	163
	10376	164
Protest against,	10424	137
Renewal when licensee in military service,	10636	145
Revocation,		
Dry district before annexation,	10479	137
Power of,	10556	138
Separate location, Requirements for,	10495	138
State liquor control commission, Authority over,	10556	138
Local option election, Operative when,	10253	129
Minors, Employment of,	10378	129
	10502	138
Package liquor stores, Sanitary requirements for,	10632	129
Schools, Distance from restaurant, etc., selling liquor,	10502	138
LIQUOR CONTROL COMMISSIONER		
Reinstatement of revoked license, Power of,	10557	145
LOCAL IMPROVEMENTS, BOARD OF		
Attorney for,	10400	41
LOCAL IMPROVEMENTS		
Compensation for,	10568	300
Damage, Obstruction of private property as,	10494	273
	10667	301
LOST, FOUND OR STOLEN PROPERTY		
Money retrieved in owner's presence,	10719	21
Municipal bathing beach, Property last at,	10709	249
Special assessment bonds, Issuance of duplicates,	10668	305
LOTTERIES		
"Hollywood Movie Quiz,"	10501	132
National emergency as affecting,	10588	133
Quiz, Chance element in,	10178	130
Salary for contestant, Effect of,	10213	131
"The Ghost Walks,"	10575	133
LOUD SPEAKERS		
Prohibition, Validity of,	10328	197

	Opinion No.	Page No.
M		
MAPS, SUPERINTENDENT OF		
Vacation plats, Recording of,	10176	185
MAYOR		
Driveway permits, Revocation of,	10202	155
Licenses,		
Liquor,		
Denial of,	10481	137
Revocation of,	10556	138
Real estate broker, Revocation of,	10530	160
Reinstatement after revocation of,	10557	145
Liquor establishments, Regulation of,	10556	138
Plumbing board minutes, Approval of,	10338	40
MEATS AND POULTRY		
Canned, Inspection and labeling of,	10354	118
Chickens, See under *Animals.*		
Dog food, Manufacture at uninspected plant,	10546	120
Government inspection,	10660	122
Horse meat, Sale of,	10617	122
Poultry killing establishment,		
Abatement of,	10284	134
Zoning of,	10275	175
Slaughter house outside city limits, Inspection of,	10660	122
MECHANICS' LIENS		
Statements from contractors on city work,	10592	249
Subcontractor, Lien of,	10592	249
MEDICAL CENTER COMMISSION		
Loans by R.F.C. and F.W.A.,	10642	107
Member, Term of office,	10642	53
Private property, Power to regulate use of,	10642	177
Zoning regulations, Power to enact,	10642	177
MICHIGAN AVENUE		
Boulevard surface, Maintenance of,	10492	104
Drains, Maintenance of,	10492	104
Sidewalk, Maintenance of,	10492	104
Viaduct, Repair of,	10459	104
MILK AND MILK PRODUCTS		
Bottle caps, Labeling on,	10239	115
"Butter cream," Distribution of,	10208	114
Coin vending machines, License for,	10256	116
Concentrates, Use in ice cream,	10243	116

	Opinion No.	Page No.
MILK AND MILK PRODUCTS—Continued		
Containers,		
Labeling of,	10312	118
Original containers, Use in fraternities,	10251	116
Single-service containers, Legality of,	10292	117
	10374	118
	10379	118
Type of,	10374	118
Converted milk products, Use of,	10243	116
Cottage cheese, Packaging of,	10607	121
Cream (frozen), Use in ice cream,	10241	115
Curd tension, Changing standards of,	10232	115
Distributing plant outside city, Vehicle inspection fee for,	10218	114
Enzyme modified milk, Change of,	10232	115
"Golden Rich," Classification of,	10537	120
"Golden-V," Regulation of,	10565	121
Homogenized,		
Milk, Legality of,	10239	115
Soft curd Vitamin D milk, Legality of,	10239	115
Ice cream, See *Ice Cream.*		
Inspection of source, Requirement for sale,	10299	117
Inspection outside of city,	10711	37
Inspection outside of state,	10639	34
Labeling,		
Bottle caps,	10239	115
Misrepresentation on,	10248	116
Vitamin "D" Guernsey milk,	10239	115
Minimum requirements, Determination of,	10529	119
Misrepresentation of,	10248	116
Mixing to obtain minimum requirements,	10529	119
Paper containers, See *Single-service containers* under *Containers* under *Milk and Milk Products.*		
Pasteurizing plant outside city, Vehicle inspection fee for,	10218	114
Permits,		
Restoration of,	10500	33
Revocation of,	10500	33
Regulations, Agency to prescribe,	10206	26
Rules, Compatability with statute,	10236	27
Sale,		
Out of city,	10711	37
Time limit on,	10312	118
Uninspected source, Prohibition from,	10299	117
Standardization of,	10260	117
"Topping," Classification of,	10666	128
"12%," Sale of,	10620	122
Vehicles, Inspection fee for,	10218	114
Vitamin "D" Guernsey milk, Labeling of,	10239	115
Wax containers for,	10292	117
"Whipped cream," Designation as,	10558	121
"Yami Yogurt," Distribution of,	10292	117

	Opinion No.	Page No.
MILITARY SERVICE		
Annuity rights during,	10582	77
Civil service employees, Vacation rights of,	10486	62
License renewal during,	10636	145
Pension deductions during,	10718	70
Salary during,	10373	54
Selective service registrants, Civil service status of,	10450	55
	10538	58
Undertaker's license renewal during,	10600	147
MINORS		
Employment in food shop selling liquor,	10502	138
Medical and dental treatment, Consent for,	10564	34
Taverns, Working in,	10378	129
Venereal diseases, Treatment for,	10261	27
MITTIMUS		
Interpretation of,	10554	44
MOTION PICTURES		
Exhibition in tavern,	10210	128
	10211	128
Talkie-movie machines, License for,	10591	161
MOTOR FUEL TAX FUND		
See *Motor fuel tax fund* under *State of Illinois.*		
MOTOR VEHICLES		
Delivery vehicles,		
Owner's identification on,	10209	148
U. S., marking of,	10655	98
Driver's license, Issuance to unlawfully convicted person,	10195	148
Drivers, Testing of,	10265	201
Government vehicles, Designation on,	10655	98
Impounding for damaging city property,	10425	198
Inspection,		
Test, Non-compliance with,	10415	149
Tires,	10594	202
Licensing by city,		
Basis of,	10696	152
Defense plant vehicles,	10698	164
Driver's license, Qualifications for,	10195	148
Exemption from,	10263	149
Non-resident vehicles for hire,	10238	149
Registration out of state,	10200	148
Tags, Free issuance of,	10263	149
Temporary resident, Requirement for,	10227	148
Trucks,		
Interstate, Use of,	10669	150
Tow trucks, Requirement for,	10183	147
Ownership designation on U. S. vehicles,	10655	98

	Opinion No.	Page No.
MOTOR VEHICLES—Continued		
Registered in another state, License when,	10200	148
Stands on public ways,	10283	156
Station wagon, Classification for wheel tax,	10462	150
Sticker, Requirement for temporary resident,	10227	148
Trucks,		
Inspection of,	10201	200
Interstate, City license for,	10669	150
Load capacity for license purposes,	10524	150
Loading of,	10271	204
Owner's identification on,	10209	148
Testing of,	10179	198
Tow trucks, License for,	10183	147
Used parts dealers, Licensing of,	10186	154
Wheel tax, Exemption from,	10263	149
MULTIPLE DWELLINGS		
Plumbing certificates, Signing of,	10205	26
MUNICIPAL AIRPORT		
Charges for flights,	10517	7
Hangar space, Leasing of,	10194	250
	10216	250
Railroad track relocation, Salvage from,	10448	206
Sightseeing contract, Validity of,	10341	251
Space, Assignment restriction in lease,	10381	252
Sublease,	10526	252
MUNICIPAL COURT		
Arrest notices, Simulation of,	10273	28
Costs, Recovery of,	10626	53
Judges,		
Arrested persons, Ordering appearance of,	10489	104
Release of arrested persons,	10489	104
Records, Destruction of,	10586	49
MUNICIPAL COURT AND LAW DEPARTMENT EMPLOYEES' ANNUITY AND BENEFIT FUND		
Military service, Rights of employees in,	10582	77
MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND		
Age and service pension, Payment to mentally ill employee,	10403	69
City contribution, Amount of,	10329	69
Participation rights, Social security tax, Effect of,	10349	69
Retirement board, Social Security Act, Effect of,	10349	69
Salary deductions,		
Liability for,	10329	69
Military service, Period of,	10718	70
Right to make,	10329	69
Transfer of employment,	10718	70
	10730	70

	Opinion No.	Page No.
MUNICIPAL TUBERCULOSIS SANITARIUM		
Board of directors, Compelling hospitalization of patients,	10367	30
Employees' injuries, Liability for,	10431	247
Officers, Liability for employees' injuries,	10431	247
Patients, Removal to another institution,	10367	30
N		
NAVIGABLE WATERS		
Calument River, Title to underlying lands,	10584	105
Illinois and Michigan Canal, Filling of,	10531	274
NAVY PIER		
Dock facilities, Lease of,	10196	250
NORWOOD TOWNSHIP		
Water, Sale to residents,	10493	257
NUISANCES		
Abatement when owner insane,	10606	170
Animals, Keeping in city,	10295	135
Buildings,		
Abatement procedure,	10321	167
	10385	169
Unsafe, Demolition of,	10657	171
Unsightly condition,	10204	166
Use constituting nuisance,	10722	172
Live poultry establishment,	10284	134
Trees, Dangerous,	10623	50
Weeds and refuse,	10541	8
	10674	136
O		
OFFICE OF CIVILIAN DEFENSE		
Industries communication fund, Establishment of,	10700	242
OFFICE OF PRICE ADMINISTRATION		
Liability of city to orders of,	10587	112
OFFICIAL BONDS		
Library directors,	10219	38
OFFICIALS		
Terms, Duration of,	10642	53
Transfer of duties,	10717	53
OFFICIAL TIME		
Daylight saving time, Extension of,	10442	6

	Opinion No.	Page No.
OILS		
Vegetable oils, Storage tanks for,	10654	177
ORDINANCES		
Building, See *Code* under *Buildings.*		
Contract, Exhaustion of authority,	10390	205
Emergency war provisions as affecting,	10704	172
Federal emergency regulations, Effect of,	10726	99
Incorporation by reference,	10649	9
Invalid, License refund when,	10708	165
Lease, Modification of,	10297	251
Permit ordinance, Expiration of,	10282	192
Railroad contract ordinance, Effect of,	10384	205
Repeal, License refund upon,	10294	163
Retroactive effect of building code,	10627	171
Zoning, Publication in pamphlet form,	10613	177
P		
PARKING		
Alleys, Commercial district,	10359	201
Attendants, Requirement for,	10382	202
Parking lot,		
Charitable or religious institution, License for,	10642	161
Driveway permit, Use by new owner,	10536	160
PARKS AND PLAYGROUNDS		
Zoning of,	10344	176
PARTNERSHIP		
Attorney's lien, Release of,	10270	230
PAWNBROKERS		
Typewriters, Federal order prohibiting transfer of,	10631	112
PEDDLERS		
License,		
Farmers,	10287	156
Ice cream vendors,	10283	156
Manufacturer peddler,	10173	154
Shoe polish,	10173	154
PEDESTRIANS		
Protection at garage driveways,	10382	202
Regulation of,	10322	201

	Opinion No.	Page No.
PENSIONS		
See also *Board of Election Commissioners Employees' Annuity and Benefit Fund; Firemen's Annuity and Benefit Fund; Firemen's Pension Fund; House of Correction Employees' Pension Fund; Laborers and Retirement Board Employees' Annuity and Benefit Fund; Municipal Court and Law Department Employees' Annuity and Benefit Fund; Municipal Employees' Annuity and Benefit Fund; Policemen's Annuity and Benefit Fund; Policemen's and Firemen's Death Benefit Fund; Police Pension Fund.*		
Military service,		
Deductions during period of,	10718	70
Preservation of rights during,	10538	58
	10582	77
PEOPLE'S GAS LIGHT AND COKE COMPANY		
Sidewalk construction, Permit for,	10180	208
PERMITS		
Air rifles, Purchase of,	10662	130
Bar permits, City leased property,	10264	100
Bridges over streets, Removal of,	10694	207
Broadcasting records, Making of in streets,	10425	198
Building,		
Damages caused by revocation of permit,	10279	175
National emergency, Permits during,	10630	171
Burial, Amputated human member,	10663	37
Chicago Housing Authority, Exemption from fees,	10572	90
Driveways,		
Construction under old permit,	10536	160
Revocation of,	10202	155
Revocation,		
Damages caused by,	10202	155
Non-compliance with ordinances,	10279	175
Trap door, Requirements for,	10396	158
Vehicles as stands,	10283	156
PETERSON AVENUE		
Curbing, Removal of,	10406	101
PLAYGROUNDS		
Injuries at, Liability for,	10327	243
Purchase of tax forfeited property for,	10212	224
PLUMBERS		
Journeyman plumbers, Temporary certificates for,	10281	179
License,		
Territorial scope of,	10240	156
Waiver of journeyman requirements,	10357	157
Master plumbers,		
Examination, Qualifications for,	10357	157
License, Waiver of requirements,	10357	157

	Opinion No.	Page No.
PLUMBING		
Certificates, Signing of,	10205	26
Emergency war standards for,	10704	172
Inspection, Administration of,	10421	6
Inspection fees, Payment by H.O.L.C.,	10226	91
Regulations, Waiver of,	10222	179
PLUMBING EXAMINERS, BOARD OF		
Certificates, Issuance to paupers,	10281	179
Minutes, Approval of,	10338	40
Regulations, Waiver of,	10222	179
	10281	179
Requirements, Waiver of,	10357	157
POLICE, COMMISSIONER OF		
Active duty, Assignment when disability ceases,	10302	54
Arrest record, Removal of,	10721	21
Arrest statement, Destruction of,	10207	9
POLICE, DEPARTMENT OF		
Awards,		
Distinguished service, Wage freezing order as affecting,	10703	68
Building department, Aid to,	10268	10
Criminals,		
Arrest statement, Destruction of,	10207	9
Identification records, Destruction of,	10721	21
Custodian of property,		
Decedent's property, Disposition of,	10244	10
Insane's property, Disposition of,	10318	11
Dogs, Impounding of,	10273	28
Embezzled funds, Disposition of,	10661	16
Explosives, Federal license to transport,	10652	98
Fingerprints,		
Acquittal as grounds for destruction of records of,	10721	21
Fugitive, Power to arrest,	10540	15
Handbills, Distribution of,	10319	195
Insignia, Imitation of,	10286	10
Money, Disposition of embezzled funds,	10661	16
Patrol trucks, Inspection of,	10201	200
Personal effects of decedent, Custody of,	10715	17
Photographs, Return of,	10721	21
Prisoners, Delousing of,	10621	16
Records,		
Criminal, Identification and fingerprinting, Destruction of,	10721	21
Subpoena of,	10342	11
Release of property,	10215	10
Resignation by telegram,	10596	59
Search of premises of deceased persons,	10715	17
Strikes aboard ship, Intervention with,	10509	11
Thrill show proceeds, Donation of,	10702	242

	Opinion No.	Page No.
POLICE JOURNAL "13-13"		
Legality of,	10286	10
POLICEMEN		
Active duty, Assignment when disability ceases,	10302	54
Occupation in another business,	10618	16
Reinstatement, Second charges after,	10507	58
Resignation by telegram,	10596	59
POLICEMEN'S ANNUITY AND BENEFIT FUND		
Child's annuity, Payments for insane child,	10351	74
City contributions, Computation during disability period,	10478	75
Future entrant, Service credits for,	10389	74
Legally dead, Disposal of funds when,	10290	73
Ordinary disability benefits, Status upon recovery,	10302	54
Retirement board, Payment for insane child,	10351	74
Salary deductions,		
Illegal discharge,	10447	75
Refund of,	10223	73
Service credit, Periods while not in service,	10389	74
Widow's annuity, Payment for fractional month,	10405	71
Widow's pension,		
Divorce, Proof of,	10532	75
Marriage,		
Proof of,	10535	76
Violation of divorce decree,	10404	74
POLICEMEN'S AND FIREMEN'S DEATH BENEFIT FUND		
Action over, Rights of city,	10169	70
POLICE PENSION FUND		
Salary deductions, Refund of,	10223	73
POULTRY		
See *Meats and Poultry.*		
POWER OF ATTORNEY		
Revocation of,	10436	61
Salary checks, Power to receive,	10320	61
PREVAILING WAGE ACT		
Scope of,	10533	64
	10614	66
	10673	66
PRISONERS		
Alcoholics, Examination of,	10343	246
Delousing of,	10621	16
Incarceration, Cumulation of terms,	10554	44

	Opinion No.	Page No.
PRIVATE PROPERTY		
Alley agreement in private conveyance,	10505	191
Armament plant, Inspection of,	10608	100
Barricade of, Temporary interference by,	10512	193
Demolition of unsafe building,	10657	171
Easement, Termination of,	10583	300
Fire mains, Liability for breakage,	10514	274
Lights on porches,	10539	170
Nuisance, Abating when owner insane,	10606	170
Parking lot for private use, Status of,	10595	174
Trees, Removal of dangerous,	10623	50
Unlicensed premises, Frequenting by owner,	10571	135
Weeds, Expense of cutting,	10541	8
PUBLIC HEALTH, STATE DEPARTMENT OF		
Milk (Enzyme Modified), Requirements for,	10232	115
Laboratory, Jurisdiction over,	10641	107
PUBLIC IMPROVEMENTS		
Bridge and subway project, Division of costs,	10574	300
Damages,		
Blasting, Liability for,	10301	243
Obstruction of private property,	10494	273
	10667	301
Motor fuel tax fund, Advance for private use,	10597	301
Prevailing wage law, Effect of,	10533	64
	10614	66
	10673	66
PUBLIC UTILITIES		
Air raid warnings, Transmission of,	10637	220
Assignment of rights in streets,	10516	217
Equipment, Relocation of,	10231	208
	10615	301
Office buildings, Electrical inspection of,	10308	214
Public ways, Compensation for use of,	10272	214
Relocation of appliances,	10231	208
	10615	301
Streets,		
Limitation on use,	10355	216
Use by unauthorized companies,	10516	217
Subway,		
Equipment reconstructed for,	10231	208
Interference, Allocation of expenses,	10259	230
PUBLIC VEHICLE LICENSE COMMISSIONER		
Motor vehicle inspection,		
Tires, Power to test,	10594	202
Taxicabs,		
License, Assignment of,	10181	147
PUBLIC WAYS		
See *Sidewalks* and *Streets and Alleys.*		

	Opinion No.	Page No.
PUBLIC WORKS, COMMISSIONER OF		
Contracts,		
Bids containing wage scales,	10356	261
Defective specifications,	10345	263
Extension beyond fiscal year,	10443	265
Interpretation of,	10503	268
Lease of airplane hangar space,	10216	250
State road, Removal of curbing on,	10406	101
Water charges, Exemption from,	10366	41
Weeds, Destruction of,	10541	8
WPA projects,		
Agreements for,	10334	95
Sponsor's contribution, Crediting for,	10335	95
R		
RADIO		
Broadcasting records, Making on streets,	10425	198
RAILROADS		
Bridges,		
Maintenance of,	10269	203
Over streets, Removal of,	10694	207
Coal shipments, Disclosing information about,	10230	203
Contract conditions, Failure of performance,	10192	203
Easements, Authority for,	10409	206
Headlight dimmers, City control over,	10280	204
Liability, Theft from car on switch track,	10363	263
Maintenance agreement, Jurisdiction over,	10638	206
Public ways, Obstruction of,	10271	204
Right-of-way,		
Forfeiture of,	10192	203
Sewers on,	10409	206
Sidewalks, Maintenance of,	10285	205
Spur tracks, Construction of additional,	10390	205
Streets, Use of,	10714	194
Tracks,		
Expense of shoring,	10409	206
Relocation, Salvage from,	10448	206
Viaduct, Expense of repairing,	10384	205
RECONSTRUCTION FINANCE CORPORATION		
Loans to Medical Center Commission,	10642	107
RECORDS		
Criminal,		
Arrest statement, Destruction of,	10207	9
Identification, Destruction of records,	10721	21
Destruction of city records,	10599	49
Municipal Court, Destruction of records,	10586	49
Relief, Confidential nature of,	10683	184
Special assessments, Inspection of records,	10553	304
	10647	304
	10684	305

	Opinion No.	Page No.
RELIEF		
See also *Welfare Administration, Commissioner of.*		
Applicant with criminal record,	10683	184
Application, False statements in,	10707	184
Employables, Listing of,	10598	183
Employees, Status while in military service,	10373	54
Funds,		
Repayment of advances,	10454	179
Use for WPA project,	10190	178
Housing projects, Eligibility of tenants,	10395	85
Milk, Purchase of,	10672	183
Overpayment, Recovery of,	10619	183
Plumbers' certificates, Issuance of,	10281	179
Plumbing regulations, Waiver of,	10222	179
Records, Confidential nature of,	10683	184
State fund, Allocation of monies from,	10454	179
Tax levy for,	10182	178
RELIEF, COMMISSIONER OF		
See also *Relief* and *Welfare Administration, Commissioner of.*		
Money due contractor, Payment of taxes on,	10496	182
Monies, Receipt and disposition of,	10513	182
Overpayments to relief clients,	10619	183
RESTAURANTS		
Fortune telling in,	10680	133
Liquors, Sale of, Zoning regulations for,	10502	138
RETAILERS' OCCUPATION TAX		
Contracts of city, See *Retailers' occupation tax* under *Contracts.*		
RIPARIAN RIGHTS		
Illinois and Michigan Canal,	10531	274
S		
SALARIES		
Assignment, Honoring for back salary claims,	10483	62
Awards for distinguished service, Wage freezing order as affecting,	10703	68
Back salary, Assignment of claims to,	10483	62
Checks, Power of attorney for receiving,	10320	61
Deductions for annuity, Payment after,	10324	61
Emergency work by regular employees,	10548	64
Lien for federal taxes,	10549	64
Overtime compensation, Right to,	10437	62
Painters engaged in maintenance work,	10614	66
	10673	66
Power of attorney to collect, Revocation of,	10436	61

	Opinion No.	Page No.
SALARIES—Continued		
Prevailing wage law, Effect of,	10533	64
	10614	66
	10673	66
Retirement, Back payment when unlawful,	10324	61
SALES		
Closing out sales, License for,	10191	155
Federal tax, Sales to city,	10542	258
Fire sale, License for,	10687	162
SALES TAX		
See *Retailers' occupation tax* under *Contracts.*		
SANITARY DISTRICT		
Bridges,		
Bryn Mawr avenue bridge, Warning signals on,	10671	111
Repair and maintenance of,	10552	105
	10665	107
Warning signals on,	10671	111
Water supply, Furnishing of,	10423	256
SCREEN QUIZ		
Legality of,	10178	130
SEAL OF CITY		
Birth and death certificates, Affixing on,	10484	32
Use on advertisement,	10659	162
SETOFF		
City's debt,	10515	249
Judgment against city,	10323	251
SEWERS		
Construction,		
Drying up wells, Liability for,	10438	101
Motor fuel tax fund, Use for,	10656	241
Railroad right-of-way, Interception of,	10409	206
Special deposits, Use of,	10610	240
Vacated streets, Cost of relocation in,	10579	191
SHOE POLISH		
Sale of, License for,	10173	154
SIDEWALKS		
See also *Streets and Alleys.*		
Cinder walk, Driveway over,	10309	192
Driveways, Pedestrian protection at,	10382	202
Encroachments, Stairways as,	10480	273
Michigan avenue, Maintenance of,	10492	104
Ornamental clock, Maintenance of,	10282	192

	Opinion No.	Page No.
SIDEWALKS—Continued		
Pedestrian, Rights of,	10382	202
Permit, Requirement by utilities,	10180	208
Railroad structures, Maintenance beneath,	10285	272
Stairways, Removal of,	10480	273
State jurisdiction, Liability for injuries when under,	10407	247
Subsidewalk space,		
Abutting owner, Rights of,	10465	272
Permit for use of,	10396	158
Subway stairs, Use for,	10465	272
Supports, etc., Repair of,	10589	301
SINGLE DWELLINGS		
Exit lighting, Requirements for,	10184	166
SMOKE INSPECTION AND ABATEMENT, DEPARTMENT OF		
Administration of,	10314	40
SNOW AND ICE		
Accumulation, Liability of city for,	10628	194
SOCIAL SECURITY ACT		
Chicago Housing Authority employees, Exemption of,	10245	80
Salary payments,		
Municipal employees' annuity and benefit fund, Effect on eligibility,	10349	69
Retirement board members, Applicability to,	10349	69
SOUND AMPLIFIERS		
Prohibition, Validity of,	10328	197
SPECIAL ASSESSMENTS		
Bonds,		
Acceptance of,	10370	302
Duplicates, Issuance of,	10668	305
Information to bondholders,	10553	304
	10684	305
Interest,		
Payment of,	10375	302
Waiver of,	10461	304
Second payments on,	10168	302
Statute of limitations on payment of,	10375	302
Use for special assessment payments,	10408	303
	10412	303
Collections, Information concerning,	10553	304
Compromise of lien,	10545	304
Delinquent property, Forfeiture to state,	10397	303
Payment, Use of special assessment bonds for,	10370	302
	10408	303
	10412	303

	Opinion No.	Page No.
SPECIAL ASSESSMENTS—Continued		
Penalties, Reduction of,	10461	304
Records, Inspection of,	10647	304
	10684	305
Surplus funds, Status of,	10658	304
SPECIAL POLICEMEN		
Licensing of,	10646	162
Weapons, Carrying of,	10611	16
	10646	162
SPRINKLERS		
Garages below street level,	10177	166
STAIRWAYS		
Encroachment on sidewalk, Removal,	10480	273
STANDS		
Vehicles used as,	10283	156
STATE OF ILLINOIS		
Arterial highway, Maintenance of,	10316	193
Cigarette dealers, Licensing of,	10467	7
Health regulations, Compliance with,	10310	28
Highways,		
Curbing, Removal of,	10406	101
Injuries, Liability for,	10407	247
State aid road, Control of,	10309	192
Width on MFT projects,	10609	107
Housing Authorities Act, Amendment of,	10444	90
Illinois and Michigan Canal, Filling of,	10531	274
Liquor establishments, Power to regulate,	10556	138
Misrepresentation as offense against,	10248	116
Motor fuel tax fund,		
Arterial highway, Maintenance of,	10316	193
Private use of,	10597	301
Street lighting, etc., Use to install,	10656	241
Streets paved by, Width of,	10609	107
Utilities, Use to install,	10656	241
Motor trucks, Testing of,	10179	198
Plumber's license, Privileges in city,	10240	156
Public health department manual, Adoption of,	10377	31
Public health laboratory, Jurisdiction over,	10641	107
Relief fund, Allocations from,	10454	179
Statutes,		
Defective passage of,	10236	27
Ordinances, Conflict with,	10236	27
STATION WAGON		
Classification for wheel tax,	10462	150

	Opinion No.	Page No.
STREET RAILWAYS		
Tracks, Relocation of,	10413	216
	10414	217
STATUTE OF LIMITATIONS		
Waiver by city council,	10445	248
STREETS AND ALLEYS		
See also *Sidewalks.*		
Alley agreement in private warranty deed,	10505	191
Arterial highway, Definition of,	10316	193
Avenue "O", City's rights in,	10391	187
Barricading of dangerous street,	10512	193
Boulevards, See *Boulevards.*		
Bridges over, Removal of,	10694	207
Broadcasting records, Making of,	10425	198
Christiana avenue, Status, of	10332	186
Cicero avenue, Control over,	10309	192
Congress street, Modification of plans,	10185	272
Dangerous conditions, Barricading of,	10512	193
Dedication, See *Dedication of Streets and Alleys.*		
Elevated railway columns, Removal of,	10695	207
Establishment by prescription,	10228	186
47th street, Jurisdiction over,	10441	103
Garage, Use of roadway for,	10573	193
Handbills, See *Handbills.*		
Jurisdiction, Transfer to Park District,	10383	101
Lease of space in,	10714	194
Maintenance, Duty of city,	10296	186
Michigan avenue, See *Michigan Avenue.*		
Motor fuel tax funds, See *Motor fuel tax funds* under *State of Illinois.*		
Names, Change of	10298	5
	10393	6
Parking restrictions,	10359	201
Pedestrian traffic, City's power to regulate,	10322	201
Peterson avenue, Removal of curbing,	10406	101
Private use, Lease for,	10714	194
Public use, Right of,	10355	216
Public utilities,		
Compensation for use of,	10272	214
Relocating appliances of,	10615	301
Use, Limitation upon,	10355	216
Railroads,		
Obstruction by,	10271	204
Use by,	10714	194
Repairs, Vehicle tax funds for,	10457	235
Roadway, Use for garage,	10573	193
Sawyer avenue, Status of,	10332	186
Signs, Removal of,	10562	45
Sound amplifiers, Prohibition of,	10328	197
Spaulding avenue, Status of,	10332	186
Speed limit, Regulation of,	10277	201
State jurisdiction, Liability for injuries,	10407	247

	Opinion No.	Page No.
STREETS AND ALLEYS—Continued		
Subdivision land, Utilities in,	10419	188
Subsurface space, see also *Subsidewalk space* under *Sidewalks.*		
Control over,	10573	193
State use of,	10391	187
Title to,	10573	193
Vacation, See *Vacation of Streets and Alleys.*		
Wacker drive,		
Elevated railway columns, Removal of,	10695	207
Western avenue, Street car track re-location,	10413	216
	10414	217
Width, Control of,	10609	107
STREETS AND ELECTRICITY, COMMISSIONER OF		
Driveway permits, Revocation of,	10202	155
Relief clients, Assigning for work,	10598	183
STRIKES		
Seamen, Police intervention with,	10509	11
SUBDIVISIONS		
Control of,	10419	188
Plat, Approval of,	10419	188
Utilities, Installation of,	10419	188
SUBMARINE CABLE		
Damage, Liability for,	10346	247
SUBPOENAS		
Police records, Production of,	10342	11
SUBWAYS		
Contracts,		
Delay by city,	10449	265
Extra compensation under,	10456	266
Interpretation of,	10503	268
Omitted work, Payment for,	10476	267
Reimbursement for city expenses,	10410	264
Retailers' occupation tax on,	10701	259
	10720	260
Damage to city property, Liability of contractor,	10504	268
Drainage in,	10340	29
Public utility equipment,		
Relocating of,	10615	301
Replacement costs for,	10231	208
Stair construction, Subsidewalk space for,	10465	272
Title examinations, Expense of,	10445	248
Traction fund,		
Municipal utilities, Use for moving,	10520	236
Protective maintenance, Use for,	10534	240
Water mains, Use to relocate,	10522	238

	Opinion No.	Page No.
SUBWAYS—Continued		
Tunnel project, Expense of studying,	10468	229
Tunnels, Liability for loss of service,	10504	268
Water pipes, Relocation of,	10490	273
Waterworks expenses, Payment of,	10259	230
SUBWAYS AND SUPERHIGHWAYS, COMMISSIONER OF		
Drainage, Jurisdiction over,	10340	29
Employees, Overtime compensation for,	10437	62
Stairways on sidewalk, Removal of,	10480	273
Tunnel project, Expense of studying,	10468	229
SURETY BONDS		
Cancellation of,	10612	50
T		
TANKS		
Flamable liquids, Safety clearances for,	10276	134
Vegetable oils, Storage of,	10654	177
TAVERNS		
Minors, Employment of,	10378	129
Motion pictures, Exhibition of,	10210	128
	10211	128
TAX ANTICIPATION WARRANTS		
Liens, Status of,	10466	227
Tax monies, Rights to,	10466	227
TAXES		
City,		
Charitable or religious institutions, Parking lot of,	10642	161
Delinquent property,		
Dedication of street, Acceptance of,	10422	226
Foreclosure suits, Appointment of receiver in,	10398	169
Possession of,	10305	225
Federal, See *Taxes* under *United States.*		
Forfeited property, Purchase of,	10212	224
Leasehold estate on city property,	10401	258
Levy for relief purposes,	10182	178
Payment, Effect on vacation of street,	10332	186
Reinsurance companies, Levy on,	10189	224
Sale, Purchase at,	10212	224
Service charges for housing projects,	10187	78
	10444	90
	10713	91

	Opinion No.	Page No.
TAXICABS		
License,		
Assignment of,	10181	147
Driver's license to unlawfully convicted person,	10195	148
Transfer of,	10563	150
TEAR GAS		
Burgular alarm, License for,	10170	154
TELEGRAPH COMPANIES		
Streets,		
Assignment of rights in,	10516	217
Compensation for use of,	10272	214
Use by unauthorized companies,	10516	217
TELEPHONES AND TELEPHONE COMPANIES		
Streets,		
Assignment of rights in,	10516	217
Use by unauthorized company,	10516	217
THEATRES		
Hollywood movie quiz,	10501	132
Lotteries, Prohibition of,	10213	131
Screen quiz, Prohibition of,	10178	130
	10575	133
TOBACCO DEALERS		
See *Cigarettes and Cigarette Dealers.*		
TRACTION FUND		
Expenditures, Classification of,	10469	236
Subways,		
Use in conection with,	10520	236
	10522	238
	10534	240
Waterworks interference, Expense of,	10259	230
Title examinations, Cost of,	10445	248
Utilities, Use in moving,	10520	236
Warrants chargeable against,	10469	236
Water pipes,		
Protective maintenance, Use of fund for,	10534	240
Relocating, Use of fund for,	10490	273
	10522	238
TRAFFIC		
Driver's test, Legality of,	10265	201
Garage driveway, Protection at,	10382	202
Loading near freight house,	10271	204
Pedestrians, Regulation of,	10322	201
Speed limits, Prima facie limit, Fixing of,	10277	201
TRAILER CAMPS		
Buildings, Definition of,	10337	173
Frontage consents for,	10473	173

	Opinion No.	Page No.
TREES		
Removal of,	10623	50
TRUCKS		
See *Trucks* under *Motor Vehicles.*		
TUNNELS		
See also *Chicago Tunnel Company.*		
Plans, Expense of studying,	10468	229
U		
UNDERTAKERS AND UNDERTAKING ESTABLISHMENTS		
Clothes and casket of decedent, Removal of,	10250	134
Frontage consents,		
Boulevard, Location on,	10347	173
Residence block, Location on,	10221	172
Trolley bus line, Location on,	10728	175
License,		
Death of licensee, Effect of,	10521	146
Military service as affecting,	10600	147
Number for one place,	10246	145
Two licenses for one location,	10528	146
Listing of deceased undertaker,	10521	146
Non-resident undertaker, Authority of,	10252	145
Operation when owner deceased,	10555	146
Out-of-town body, Burial of,	10252	145
UNITED STATES		
Army service, See *Military service* under *Employees of City.*		
Buildings,		
City jurisdiction over,	10678	98
Lease for Army Signal Corps, City jurisdiction over,	10723	99
Collector of Internal Revenue, Distraint warrant by,	10496	182
Congress street, Rights in,	10185	272
Defense Plant Corporation,		
Buildings financed by, City jurisdiction over,	10689	98
Buildings of, City jurisdiction over,	10678	98
Defense plants financed by, City jurisdiction over,	10689	98
Easement, Acceptance of,	10485	95
Excise tax,		
City purchases,	10542	258
Subway equipment,	10681	259
Explosives, License to transport by police,	10652	98
Housing projects,		
Sidewalk construction, Permit for,	10180	208
Taxation of,	10187	78
	10444	90
	10713	91

	Opinion No.	Page No.
UNITED STATES—Continued		
Illinois and Michigan Canal, Filling of,	10531	274
Income tax,		
Donations to Service Men's Center, Deduction for,	10729	100
Lien for,	10549	64
Marketing rules and regulations, Retroactive effect of,	10682	271
Motor vehicles bearing name of,	10655	98
O. P. A.,		
Regulations, Liability of city to,	10587	112
Retroactive effect of,	10682	271
Revenue law re: freight charges, Effect on city contracts,	10727	271
Selective Service Act, See *Selective service registrants* under *Military Service.*		
Taxes,		
City purchases, Excise tax on,	10681	259
Distraint warrant for,	10496	182
Social security tax, Payment affecting annuity fund rights,	10349	69
Transportation tax, Application to city employees,	10567	259
Typewriters, Transfer of possession by pawnbrokers,	10631	112

V

VACATION OF STREETS AND ALLEYS

Chicago Housing Authority, Removal of improvements in vacated area,	10616	90
Ingress and egress, Liability for loss of,	10460	191
Ordinance, Reservation re: water mains,	10579	191
Park purposes, Vacation for,	10174	185
Partial vacation, Liability for,	10171	185
Philadelphia place, Recording of instrument,	10550	191
Recording by bureau of maps,	10176	185
Recording of instruments, Effective date of,	10550	191
Removal of unwanted improvements,	10616	90
Reversionary interest, Acquisition by Housing Authority,	10317	84
Sewers, Cost of relocation,	10579	191
Taxes, Effect of payment of,	10332	186
Turning area, Construction in lieu of outlet,	10460	191
Water mains,		
Cost of relocation,	10579	191
Reservation for operation,	10579	191

VEHICLES
See *Motor Vehicles.*

VEHICLE TAX FUND

Street repair, Use for W. P. A. improved street,	10457	235

	Opinion No.	Page No.
VENDING MACHINES		
See *Coin Operated Machines.*		
VENEREAL DISEASES		
Hospitalization, Court order for,	10487	32
Minors, Treatment of,	10261	27
VENTILATION		
Cooling system for hospital delivery room, Requirements,	10249	167
VIADUCTS		
Repairs,		
Agreement for repair and maintenance, Jurisdiction over,	10638	206
Jurisdiction of Illinois Commerce Commission over cost of,	10691	207
Roosevelt road,		
Repairs, Cost of,	10691	207
W		
WARRANTS		
Fugitive warrant, Obtaining by police,	10540	15
Tax anticipation warrants, See *Tax Anticipation Warrants.*		
Traction fund, Chargeable against,	10469	236
WATCHMEN		
Licensing of,	10646	162
WATER		
Charge exemptions,		
Charitable organizations,	10366	41
Hospitals,	10366	41
Fund,		
Property, Donation of,	10506	7
Mains,		
Beyond city limits,	10664	257
Breakage of,	10514	274
Deposit covering several certificates,	10581	257
Extensions, Refunds on,	10677	258
Installation by motor fuel tax fund,	10656	241
Protection during subway construction, Cost of,	10534	240
Refund on separate certificates,	10581	257
Relocation of utility equipment for installation of,	10355	216
Vacated streets, Relocation costs,	10579	191
Pipes, Relocation for subway,	10490	273
Pumping station, Ownership of,	10470	256

	Opinion No.	Page No.
WATER—Continued		
Supply,		
Beyond city limits,	10664	257
Industrial districts, Furnishing to,	10423	256
Non-residents, Furnishing to,	10493	257
Other municipalities, Furnishing to,	10423	256
Waterworks system, Expenses of subway interference,	10259	230
WATERWAYS		
Easement for,	10485	95
Illinois and Michigan Canal, Filling of,	10531	274
WEAPONS		
Air rifles, Regulation governing,	10662	130
Concealed weapons, Prohibition of,	10392	130
Knives, Restrictions on carrying,	10392	130
Special police, Right to carry,	10611	16
WEEDS		
Cutting, Expense of,	10541	8
Destruction of,	10674	136
Nuisance, Classification as,	10674	136
WEIGHTS AND MEASURES		
Cattle weighing, Union Stock Yards,	10570	45
Coal, Fraudulent substitution of,	10230	203
Inspection,		
Scales, Union Stock Yards,	10570	45
WELFARE ADMINISTRATION, COMMISSIONER OF		
Milk, Authority to contract for,	10672	183
Perjury in application, Determination of,	10707	184
Records, Confidential nature of,	10683	184
WESTERN AVENUE		
Street car tracks, Relocation of,	10413	216
	10414	217
WHEEL TAX LICENSE		
See *Licensing by city* under *Motor Vehicles.*		
WOLF LAKE		
Level, Control of,	10391	187
WORDS AND PHRASES		
"Arterial highway street,"	10316	193
"Premises,"	10340	29
"Renewing,"	10269	203
"Team tracks,"	13276	134
"Tow truck,"	10183	147

	Opinion No.	Page No.
WORKMEN'S COMPENSATION ACT		
Deposit of securities under,	10697	271
Compliance with Act by contractors,	10697	271
WORK PROJECTS ADMINISTRATION		
Agreements, Execution of,	10334	95
Projects,		
Costs, Liability for,	10334	95
Relief expenditures for,	10190	178
Sponsor's contribution, Credit for regular employees,	10335	95
Street car tracks, Relocation of,	10413	216
Street improvements, Funds for repair of,	10457	235
Workers, Liability for injuries of,	10431	247
X		
X-RAY LABORATORY		
Operation of,	10348	157
Z		
ZONING		
Board of Appeals,		
Conformity decision, Reversal of,	10433	176
Revised zoning ordinance, Effect on action of board,	10693	177
Districts, Effect of change in,	10446	176
Liquor sales in clubs, restaurants, etc.,	10502	138
Lot requirements for dwellings,	10458	170
Medical Center Commission, Power of,	10642	177
Ordinance,		
Amendment,		
Procedure for,	10339	176
Publication of,	10613	177
Scope of,	10446	176
Revision, Effect on pending variation ordinances,	10693	177
Park land,	10344	176
Poultry killing establishments, Classification of,	10275	175
Reclaimed land, Use for park purposes,	10344	176
Tanks for storage of vegetable oils,	10654	177